

**Montana Public Safety Officer
Standards and Training
(POST) Council
Workplace Fact-Finding Report**



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Montana Public Safety Officer Standards and Training (POST) Council Workplace Fact-Finding Report

I. Introduction:

This report relates to a fact-finding review into organizational and individual performance concerns related to the POST Council and its Executive Director, Wayne Ternes. The objectives of the review are to: identify and verify issues related to constituent and Council concerns and identify potential solutions and strategies for improving individual and organizational performance.

The review involved interviews with relevant witnesses and two interviews with the Executive Director, Wayne Ternes (one in person and one by phone). The following report summarizes the approach taken; provides an overview of issues and concerns identified in the interviews; provides preliminary findings; and includes a summary of recommendations.

II. Methodology and Approach:

Steve Barry, Acting Chair of the POST Council, contacted me, Jim Kerins, a Human Resources Consultant from Communication and Management Services, LLC (CMS) to conduct the review and prepare this report as a designated management representative. I conducted interviews in August, September, and early October 2012. Attached to this report are interview summaries and additional documentation from participants.

List of participants & chronology:

Date/time of interview	Interviewee	Role
8/31/2012; 1:30 p.m.	Kevin Olson	Montana Law Enforcement Academy (MLEA) Executive Director
9/5/12, 10:00 a.m.	Mike Batista	Division of Criminal Investigation (DCI) Administrator
9/5/12, 1:30 p.m.	Winnie Ore	Former POST Council Chair; public member
9/13/12, 1:00 p.m.	Mark Muir	Missoula Police Chief; Montana Association of Chiefs of Policy (MACOP) President
9/12/12; 9:50 a.m.	Vern Burdick	Chouteau County Sheriff; Montana Sheriff's and Peace Officers Association (MSPOA) President
9/14/12, 9:00 a.m.	Jerry Williams	Montana Police Protective Association (MPPA) Executive Director
9/17/12, 12:00 p.m.	Tony Harbaugh	Custer County Sheriff; MSPOA Member; POST Council Member representing Sheriffs

9/17/12, 3:50 p.m.	Jim Smith	Libby Police Chief; POST Council member representing Chiefs of Police
9/18/12, 10:30 a.m.	Georgette Hogan-Boggio	Bighorn County Attorney; POST Council Member representing County Attorneys
9/18/12, 2:30 p.m.	Perry Johnson	Ravalli County Undersheriff
9/19/12, 9:30 a.m.	Dennis McCave	Yellowstone County Detention Center; POST Council Member representing detention centers
9/19/12, 2:00 p.m.	Brian Gootkin	Gallatin County Sheriff; MSPOA Vice-President
9/21/12, 1:00 p.m.	John Schaffer	Lt., Patrol Services, Great Falls Police Department; POST Council member representing local law enforcement
9/24/12 10:30 a.m.	Roger Nasset	Chief, Kalispell City Police Northwestern Regional Director, Montana Association of Chiefs of Police
9/24/12, 1:30 p.m.	Steve Barry	Corrections Staff Services Administrator POST Council member representing Department of Corrections
9/25/12, 11:00 a.m.	James Raymond	Polson & Ronan City Attorney
9/25/12, 1:30 p.m.	Doug Chase	Former Polson Police Chief Former Missoula Co. Sheriff Former Missoula Police Chief
9/26/12, 1:00 p.m.	Mike Mehn	Fish, Wildlife and Parks Retiree Former POST Council Member representing FWP.
10/2/12, 1:00 p.m.	Elizabeth Bartholome	Ronan Citizen
10/3/12, 9:00 a.m.	Clay Coker	POST Council Compliance Officer
10/3/12, 11:30 a.m.	TanaMeuer	POST Council Executive Assistant
10/8/12, 10:00 a.m.& 10/16/12 4:00 p.m.	Wayne Ternes	POST Council Executive Director
10/9/12, 4:00 p.m.	Sarah Hart	POST Legal Counsel
10/11/12, 1:30 p.m.	CandiMullenbach	Division of Criminal Investigation Operations Manager
10/16/12, 9:30 a.m.	Alex Betz	Sgt. Montana Highway Patrol POST Council State Government Law Enforcement Representative

III. Findings:

The August 15, 2012 POST Council meeting and subsequent witness interviews resulted in the identification of several significant areas of concern. This report contains a summary of these concerns and excerpts from the interviews that further illustrate the concern and provide supporting examples.

In addition to exploring areas of concern, I also asked participants to identify what they saw as strengths or opportunities with Director Ternes; their opinion on steps that POST needs to take as an organization to improve operations and perceptions; and their thoughts on the ideal outcomes of this review process.

Many participants provided recommendations on areas that could be improved and specific steps necessary to implement improvements. These suggestions are included in the report following the summary of concerns.

Interview summaries, while not included in the body of the report, are included as Attachments, and provide additional detail and information regarding participant concerns and suggestions.

The illustrated (i.e., supported by examples) concerns expressed by participants include the following areas:

1. Inaccurate or incomplete information provided to the POST Council.
2. Communications that have damaged relationships with stakeholders.
3. Perceived Legislative Proposals that have damaged trust with partners.
4. Office administration issues that were not addressed in an effective or timely manner.
5. Lack of timeliness, perceived lack of action, and lack of communication regarding decertification issues.
6. Unsubstantiated allegations & mitigating issues (there are a few significant allegations I was unable to substantiate that are cited in this section with the intent of providing closure on these issues).

Issue 1: Inaccurate or incomplete information provided to the POST Council.

Inaccurate information provided to the POST Council:

One of the issues raised by members of the POST Council and others in attendance (or listening in on) the POST Council meeting on August 16, 2012, was the misrepresentation of the 2015 biennium Executive Planning Process (EPP). According to direction from the Office of the Governor, Office of Budget and Program Planning (OBPP), agencies must submit all EPP requests by May 7 and budget requests between August 27 – September 1, 2012 (Source: OBPP '15B – Memo 3). In addition to the agency requirements, the Department of Justice also has its own internal process and deadlines for the budget process.

The POST Council is administratively attached to the Division of Criminal Investigation (DCI) at the Department of Justice (DOJ), and submits its budget request through DCI and the DOJ. Mike Batista (Division Administrator) and Candi Mullenbach (DCI Operations Manager) are responsible for the DCI budget submission.

The recording from the August 16, 2012 POST Council meeting includes the following exchange between Council members and Wayne Ternes. The aspects of the exchange that relate to the alleged misrepresentations by Ternes are in bold.

[Winnie Ore] I'm just a big believer in action plans that really kind of keep things sort of there, so Wayne if you'd like to walk through what action has been taken and the struggles you've faced

[Wayne Ternes] ...I will tell you my struggle for this year, I think our operating dollars were OK, but we had identified staff again to request, and during our April meeting if you recall, we talked about the time, and Steve you will remember we were right there, **so after the meeting I went back and made the phone call and said, I know we're under a crunch and I have some things [1:15:44], and I was informed we were left out of the process, we weren't even on the meeting agenda or table, so we weren't noticed of EEP out of the division we are attached here with in Justice. I can't answer why, I know that we weren't, there could be a lot of reasons [1:16:03] in requesting extra staff, we just know how it is right now with legislature, and people were thinking maybe that just wasn't going to happen.**

So, my question to you folks for that one is, where do we go with the next step? The next step could be proposing our own outside of that through legislation, but that is just not fair to the whole process in Montana or the governor or the incoming governor, or anybody's budget when you do that because that is the rules of the game and how you are supposed to go through the EPP, but this year we were left out of that.

[Georgette Hogan-Boggio] I seem like a chatty Cathy, but **it seems like you did take some action.**

[Wayne Ternes] - one is an attorney. We were going to ask for a full time attorney, split this position in two that Clay currently has which was the intention in 2009, and also an administrating staff to enter data. I sent you an email before and I said I wasn't complaining but just stated the facts, but when it comes to POST and its functions and data entry, prior to the law change in 2007, there were upwards of 9 state employees spread out through the law enforcement academy and Board of Crime Control and Department of Corrections there were nine people that assisted in the functions of you all and this Council and now there are three, and we hire temps when we can, and we can use them for ___ hours at a time.

July started we've got two new temps on the way, and getting us caught up on data entry an filing, and then...

[Steve Barry] The POST business plan includes a significant communication piece I think the chief mentioned yesterday. Part of that is **the relationship built with stakeholders, by which these particular goals are accomplished. I'm not sure what happened in EPP, but I would think that part of your job profile, Wayne, is significantly addressing the budgeting aspect of POST. I don't know who told you you got left out of the process, because certainly we are impacted significantly by this, especially going into this legislative session where there appears to be some money in the bank. The identification of alternative money sources the identification of staff attorney needs, the hearing process, I just think we are way behind the ball because we were left out of that process. and probably a lot of reasons why we got left out, but it is extremely difficult for me [1:19:54] to recognize that there wasn't a identified plan to address those needs that was at least forwarded to somebody in central services of Justice to at least let them know we are here.**

[Wayne Ternes] I asked for that I was told we were left out of that with this division, I asked what were our remedies, I was told, and I wanted to bring it back to you folks to see if it was even worth going forward with those [1:20:33]. Um, that we could here, we're in August that we could ask for those if we want to put them out there.

[Georgette Hogan-Boggio] –I'm a reader person versus an auditory, I would like to see this first part, where you determine staffing fiscal needs for budget approval. I would like to see, I'm not trying to make you do busy work, is to outline how you would vision the staff to look like, the duties they would do and the statutory obligation that goes with that, do you see what I am saying.

[Wayne Ternes] Yes, the statutory obligation is what we do. That.

[Georgette Hogan-Boggio] I'd like to see that I don't know about anybody else, but visually it helps

[Tony Harbaugh] - Did I understand you to say Wayne that you have the opportunity or ability by the end of August?

[Wayne Ternes]- I was told to bring this to you all and get something up the pipe that would go up tomorrow in a request.

[Steve Barry] Told by?

[Wayne Ternes] I was told by CandiMullenbach within DCI who now has the new in the job , and she hasn't been in there that long and didn't understand who, what where,

I had a tremendous amount of communication with the former employee in there, Carrie Whitlock, um, very little now, only when certain things come up with Candi. I have requested communication several times from central services but were referred back to Candi through DCI.

[Steve Barry] If there is a door open to that process, and I know, Chris you know this more than I do, but the AG has the ability to ask for budgetary appropriation outside the Governor's office. My concern is we haven't had the opportunity as a body to quantify what that looks like an put a seal on it. If it's an attorney, or additional staff for data entry whatever that may be. As Georgette mentioned, I don't know what the vision looks like in terms of that. I think I can understand what you're saying where statutory duties require certain resources in people or money, but I am not sure what the priorities look like

[Wayne Ternes] I guess I needed to be more clear when I was asking for some feedback with that email about staffing levels and I guess I should have just written in there, what is your suggestion on what we ask for.

[Georgette Hogan-Boggio] I'm asking you to give me suggestions, and I'll give you feedback. That will help me because you have a better vision of the day to day operations. 1:23:55

[Wayne Ternes] And part of that was hiring the attorney, in the way that we did, but we are directed by law to use agency legal services, and we were only able to bring Chris on because of review process that's in place with the state, and you folks saw that happening, I'm good with that folks, however, you want that done.

[Winnie Ore] Can you give this body a breakdown of what you need so we can get it in that window.

[Wayne Ternes] I'll email it out to you tomorrow, what we're looking at for those and why we're looking at them and how that would work.

[Winnie Ore] And then you have till when in August?

[Wayne Ternes] I'll find out today.

[Winnie Ore] keep going, any other questions on goal one?

[Mike Anderson] [1:24:12] I guess I don't understand why we don't have that document today if you knew there was a limited window why you didn't make that up and have it for us today?

[Wayne Ternes] Because I'm, confused about what you folks want. Some of you want me just to do this, and some of you are saying you want more of this (unintelligible). I didn't know, really, There really isn't a document. We have those justification sheets we do for when we do employees, and I have those back at the office, but I... because I've been told don't ask for anything from some of you on the side when I talk to you, we've been ok, the last session was don't go anywhere, we need resources, but now is not the time to do it, you know.

In the above interchange, Mr. Ternes stated that:

1. [Wayne Ternes] "after the meeting I went back and made the phone call and said, I know we're under a crunch and I have some things [1:15:44], and I was informed we were left out of the process, we weren't even on the meeting agenda or table, so we weren't noticed of EEP out of the division we are attached here with in Justice. I can't answer why, I know that we weren't, there could be a lot of reasons [1:16:03] in requesting extra staff, we just know how it is right now with legislature, and people were thinking maybe that just wasn't going to happen."

"I asked for that I was told we were left out of that with this division, I asked what were our remedies, I was told, and I wanted to bring it back to you folks to see if it was even worth going forward with those."
2. [Wayne Ternes] "I was told to bring this to you all and get something up the pipe that would go up tomorrow in a request." [Steve Barry] "Told by?" [Wayne Ternes] "I was told by CandiMullenbach within DCI who now has the new in the job, and she hasn't been in there that long and didn't understand who, what where, I had a tremendous amount of communication with the former employee in there, Carrie Whitlock, um, very little now, only when certain things come up with Candi. I have requested communication several times from central services but were referred back to through Candi through DCI."
3. [Wayne Ternes] "I'll email it out to you tomorrow, what we're looking at for those and why we're looking at them and how that would work."
4. [Mike Anderson] [1:24:12] "I guess I don't understand why we don't have that document today if you knew there was a limited window why you didn't make that up and have it for us today?" [Wayne Ternes] "Because I'm confused about what you folks want. Some of you want me just to do this, and some of you are saying you want more of this (unintelligible). I didn't know, really, There really isn't a document."

In relation to the above statements, review participants provided the following information:

1. In the interview with Candi Mullenbach, (Attachment A), I asked, *"did Wayne Ternes call you in April? The call where he said you told him POST was left out of the process? Ms. Mullenbach responded, "No. There was no communication like this. When we didn't get a response, Eileen followed up."*

Ms. Mullenbach also stated that, "I met with Wayne and Kim Moore, my fiscal technician, on March 28, 2012. At that time, I gave him a report that showed POST expenses for the past three years with year-to-date totals. We also discussed EPP and I said I had an EPP form. Then, on March 29, he emailed me. He did not reference our meeting the day before, and asked me for the form, and I emailed it to him on the 29th. [Mullenbach & Rose Documentation, (Attachment B)] email dated Thursday, March 29, 2012 11:31 from Candi Mullenbach to Wayne Ternes]. I never heard anything back, and then Eileen Rose, the CSD Budget Analyst asked where the POST information was. I let Eileen know that POST was sent the form and did not respond [email dated April 25, 2012, 3:20 PM from Candi Mullenbach to Eileen Rose]. She [Eileen] had gotten in touch in April to begin to work on the EPP request. We were working with them in March and April.

Eileen Rose, DOJ Centralized Services Division Budget Analyst and Candi Mullenbach provided additional documentation supporting their recollection of events (Attachment B).

In the interview with Tony Harbaugh (Attachment C), he stated that, "At the August meeting, there is a process to go through the Department of Justice for budget requests, and Steve asked why we weren't getting anything, and Wayne's answer to Steve was that DOJ said we're not getting anything. I personally had a conversation with Mike Batista and Mike said they had sent forms to Wayne Ternes and didn't get anything back. So, the initial deadline had gone by and this was nothing more than a blatant oversight and disregard of the budget process. I saw the reaction on Steve Barry's face."

2. In relation to Mr. Ternes statement to Steve Barry that "I was told [by Candi Mullenbach] to bring this to you all and get something up the pipe that would go up tomorrow in a request, I asked Ms. Mullenbach, "did you direct him to go to the August meeting to get budget information from the Council?" She replied, "No. As far as the Council goes, I'm not aware of the programmatic side, only the operational and fiscal stuff. If he had gotten a hold of me, I would have referred him to Mike [Batista]."

In the interview with Ms. Mullenbach, she stated that "With regard to Wayne's testimony that 'she hasn't been in there that long so she didn't understand who, what, where,' that isn't accurate. I have been with the state for twelve years, and I have been through the legislative process."

3. While it is unclear if Mr. Ternes emailed the POST Council with the EPP document on the 17th as promised in the above exchange, he did email Kila Shepard, Department of Justice Personnel Officer, on August 19, 2012 at 1:58 PM, and stated that, "I spoke with Candi a while back and she did indicate that we were left out of the process with DCI." [Mullenbach & Rose Additional Documents (Attachment B)].
4. Discussion of the issue Eileen Rose, Budget Analyst from DOJ Centralized Services Division indicate that contrary to Mr. Ternes' response to Mike Anderson [at 1:24:12], there is a 2015 Biennium EPP Detail Form, and

her email trails indicate the form was transmitted to Wayne Ternes by CandiMullenbach in March 2012, and that Ternes did not respond.

In the interview with Ms. Mullenbach, I asked her about Ternes response to Anderson. Specifically, is this accurate, that there is no document? Ms. Mullenbach responded, "No, there is a document, and I emailed it to him on March 29, 2012. Clay worked directly with CSD and got the document completed."

The statements and documentation provided by the participants detailed above indicate that the statements made by Mr. Ternes at the August 16, 2012 meeting were inaccurate or misrepresentations of what occurred. Other participants in the review indicated they were aware of Ternes' statements at the meeting, which indicates that this misrepresentation is known beyond POST and its staff, and has damaged credibility on the part of Mr. Ternes. For example, in the interview with Mark Muir (Attachment D), he stated that, "Thursday [August 16, 2012], after the listening session, on the 15th, he was asked to give an update on the business plan to the Council and Wayne told them POST had been overlooked in the EPP for the upcoming biennium and weren't going to get funding for adequate staffing because POST had been overlooked by the Department of Justice. Mike Batista may have more information, but I think this may be a lie."

When I interviewed Mr. Ternes (Attachment H) about this issue, I said, "please tell me about the 2012 EPP process." Mr. Ternes replied, "I had a whole lot of things I wanted to take before the EPP process, but you get busy and I wasn't getting anything from DOJ. Carrie Whitlock, who now works for the Historical Society I think, was the person I used to work with at DOJ, and she kept me informed. At the meeting, someone asked, where are we with the budget request, and I said I had to call and see where we were at. I called CandiMullenbach, and she said they already had the meetings and that I missed them. I asked why wasn't I invited. During the last session in 2009, I was invited, we went up, and met with DCI. In 2011, the direction from the Council was that we weren't going to ask for anything. For the 2013 session, I knew there were things we needed, and when I finally contacted them up there, they said, we already had the meetings and you were left out. This was in the springtime. Steve would know the dates. When I contacted her, she said we were left out. You don't hear, and you finally make a phone call. I've never been given real clear direction on what they want. This goes back to the code of ethics."

Incomplete information provided to the POST Council

Another concern raised by several POST Council members related to incomplete information provided by Mr. Ternes at the August 16, 2012 Council meeting.

Specifically, in the interview with Winnie Ore (Attachment Y), she stated "it was a shock on the second day of the meeting when I asked him to provide an update on what he was doing in relation to the business plan to find out nothing was happening. I had told Wayne I wanted an action plan and that he could talk about where things were at. Wayne did a very poor job. When he brought it to the Council, it was beyond an inferior product, and it really affirmed that the concerns that had been brought up were valid. It was proof that he had not been doing the

job as he had indicated to me. The next Council Chair should have the goals in hand at every meeting.”

In the interview with Georgette Hogan-Boggio (Attachment N), she stated, “my concern with regard to Wayne Ternes’ leadership is that Winnie Ore had designed a process and form for him to present objectives and he was to outline what he had done and what support he needed, and it was pretty empty. Mike Anderson asked why it wasn’t more prepared, and I knew he had taken action on some items, but he hadn’t articulated them on the form, so I was puzzled why he hadn’t developed that more. I found it strange that he didn’t have time to complete a very detailed form, but had time to line up a speaker from out-of-state, who ended up cancelling, who was going to talk about how their POST functions. I felt it was interesting that he had worked on this rather than completing the form.”

In the interview with POST Council Member Jim Smith (Attachment O), I asked, what about his progress as Executive Director in relation to the business plan [Long Range Operational Plan]? Chief Smith replied, “I wasn’t really privy to what was going on with this. It was pretty much between Wayne, the Business Plan Committee, and Winnie. It did come out at the closed session that he had not done a few things on the business plan. It also came out that he had procrastinated and not submitted a plan, and the budget is now in jeopardy. From what I understand, Acting Director Coker has completed that item and submitted it to Steve Barry.”

The incomplete reporting appears to represent a performance deficiency with regard to a reporting assignment made by the Council Chair.

Several Council members also expressed a concern that Mr. Ternes was not clear with them regarding his presentation to the Legislative Law and Justice Committee on April 20, 2012. For example, in the interview with Tony Harbaugh (Attachment C), he stated that, “Following the April meeting of the Legislative Law and Justice subcommittee, I received a call from Dennis McCave asking if he had missed a meeting where we had agreed to make a justice agency out of POST and make a peace officer out of the investigator. I was shocked and was taken aback. Something that significant needs to be taken before the Council and has created a mess. Now there is a Senator who thinks that crime runs rampant in local law enforcement agencies and that POST needs more authority.”

In the interview with John Schaffer (Attachment T), he stated that, “He talked about the fact that he was invited to the Law and Justice Committee, but I did not know about the legislative drafts. We had a discussion about the old AG memo concerning confidential criminal justice information, but no discussion about presenting legislative drafts.” Additional impacts of the legislative presentation (e.g., reactions of external stakeholders) are presented later in the report.

Chief Roger Nasset from Kalispell (Attachment F) also expressed a concern with a presentation that Wayne Ternes gave to the POST Council on April 12, 2012. Chief Nasset stated that when Mr. Ternes presented information to the Council regarding an officer accused of misconduct (in relation to requiring mandatory reporting by agencies), he omitted the fact that Chief Nasset had called Wayne Ternes to consult on the matter. The Chief felt this

omission implied that he or his agency had no contact with POST in the matter, which is inaccurate, and that it portrayed him and his agency in a poor light. This matter is discussed further later in this report.

Issue 2: Communications that have damaged relationships with stakeholders.

The interviews with the review participants provided examples of several communications on the part of Wayne Ternes that the participants feel have damaged his credibility, and have inaccurately portrayed events or their agencies. The following examples provided by participants include communications to the POST Council, the Legislative Interim Law and Justice Committee, communication with officials in Ronan and Polson, and communication with the media.

POST Council Presentation – Kalispell Police Department

As cited in the previous section regarding incomplete information provided to the POST Council, Chief Nasset from Kalispell expressed significant frustration with a communication from Mr. Ternes to the POST Council that Nasset feels portrayed him and his agency in a poor light. Specifically, during the April 12, 2012 POST Council meeting, Wayne Ternes made the following statement:

[Wayne Ternes]: Let me throw this example out that just recently happened. We have good guy officers that tell us that said, hey there's an issue you need to know about what's going on. I said please tell me, so they filled me in, I just thought are you kidding me? So I call my good friend. I think he's my friend, we have been for 16 years, Chief Nasset at Kalispell police department. And Roger was great with me. I said, Roger really this happened? and he Roger literally just sat you could hear the sigh over the phone and he says Wayne I'm glad you called. He said but I was ordered under an agreement with this officer through the local contract whatever through their HR that the agency nor the city would notify POST nor take any action towards his certification.

In the interview with Chief Nasset (Attachment F), he stated, "at the April 2012 POST meeting, in reference to decertification, my name and our department was brought up by Wayne, and a substantial amount of derogatory and incorrect information was provided to the POST Council by Wayne. We had investigated an officer internally about him dealing with females while on duty trying to get dates for off-duty. When I first started the investigation, I called Wayne to give him a heads up and to get direction. Wayne Ternes called Clay Coker into his office, and I told them that I was pulling the Criminal Investigation Bureau into the investigation. This was October 2011 when I spoke to Wayne Ternes and Clay Coker. I called to get advice, and considered it notification [to them of the issue] as well. It ended up being an employment rather than a criminal issue, but never was resolved. Wayne went on record talking to the POST Council regarding issues about departments not following up on certification issues, and goes on to belittle our department. He said he never would have found out about it unless a good guy officer called and let him know [saying one of my officers reported it instead of me]. What he said to the POST Council was a misrepresentation of what really happened. I was confused by this. In the August 2012 meeting, he [Ternes] admitted I had a phone conversation with him before the investigation."

I later asked Chief Nasset, "do you recall the conversation where Wayne said he called you and you sighed and said that you were bound by an agreement not to take certification action?" Chief Nasset replied, "I do not recall this conversation. I'm not saying it didn't occur, but I can tell you with 100% certainty that it did not occur in the context he presented it. It wasn't by any means the way he presented it to the POST Council." I asked, what aspects were misrepresented? Chief Nasset replied, "number one, he knew about the issue because of my prior conversation, so to say he called me out of the blue doesn't make sense, and I know that didn't occur. Secondly, I didn't sigh about it because I felt it was mishandled, because how we handled it was by following our normal process. Essentially, the officer came in to start his second day of interviews. That was when we were really going to get into the meat of the complaint. Before we sat down, his attorney asked to speak to the city representative, and said the officer was willing to resign and didn't want to go through the second day of interviews. The agreement was that the City would not take affirmative action to revoke his certification, but as part of that, we said we had notified DCI, and if we were asked, we would tell the truth. At that time, the termination slip just says, resigned, fired, it doesn't give a category for resigned under unusual circumstances. If a guy wants to resign, you know as an HR guy that you let him, you don't say, no, you have to keep working. We didn't make any agreement that if another prospective employer called we wouldn't tell them about it."

I asked Chief Nasset, "When was your original call to Wayne Ternes?" Chief Nasset replied, "We gave notice to Officer [REDACTED] on October 24, 2011, so I guess my conversation with Wayne would have been a week within that date. I made a call right to his office at POST from this number [406-758-7786]. I don't know if there are state records to see if Wayne called me back. My issue **is with the way a lot of what he said was presented to POST**. When it is typed out, the tone does not come across, but I took it as very derogatory, and **the way he presented my sigh was inaccurate. If I did sigh, it was over [REDACTED] conduct, not because I didn't report it and Wayne caught me as he implied to the Council**. I have since received a letter from Clay Coker that they have an active investigation into him. **Also, the implication that I covered something up by checking that he resigned is inaccurate**. I take offense to that part. On the termination slip, it said, did he resign, and yes, he did resign."

When I interviewed Mr. Ternes (Attachment H) about this matter, I stated, "Chief Nasset's recollection is that he called you to give you a heads up; to get direction; and to tell you he was pulling the Criminal Investigation Bureau into the investigation in late October 2011. He stated that while he was bound by an agreement to not take any affirmative action against [REDACTED] certificate, he felt the way you portrayed it on April 12 was derogatory towards his office and inaccurate." Mr. Ternes replied, "if you look at the dates and how it went, he took it as derogatory, and it wasn't his decision." He did call me prior to the investigation and said he had DCI looking at an officer, but he didn't say [REDACTED]. It wasn't derogatory to him, I was just pointing out that agencies were making agreements with officers to not send in a report to POST. I was pointing out that the Kalispell Mayor's Office or Nasset never notified POST as to the outcome. Nothing I said was incorrect. They didn't tell us, we were notified by an internal officer." He also stated that, "It is embarrassing, but not false, and it is the way the system is set up. There is no mandatory reporting."

In the interview with Mr. Ternes, I said, “it is my understanding Roger was frustrated because he did call you and notify you of the investigation, but when you presented it to the POST Council, you did not mention that he had called you,” and Mr. Ternes stated that, “yes, but the outcome –we were not notified of the outcome, and we’ll change the system to make it better.”

Based on my interview with Mr. Ternes, it wasn’t clear if he understood the source of Chief Nasset’s frustration or how leaving out the fact that Nasset called him in October 2011 regarding the matter lead Nasset to believe the incident was being misrepresented to the POST Council. Chief Nasset told that Council that the result of Ternes communication in this instance had the result of “create[ing] a certain mistrust on my part.”

Other participants expressed a concern with this issue that the current POST Termination Slip only includes categories for Resigned, Retired, Medically Disabled, Deceased, Other, or Involuntary, and that if an officer voluntarily resigns, the only appropriate category is “Resigned.” The participants indicated that there is no clear category to indicate if an officer voluntarily resigns under unusual circumstances.

Mr. Ternes also made a statement regarding the issue of law enforcement agencies not reporting the details behind voluntary resignations on the termination slip in the April 12, 2012 meeting that could be considered hyperbole and appears to have exacerbated the previous omission. Specifically, Mr. Ternes stated that, “how do you feel when that pedophile teacher is in your community because some other state wouldn’t take action on him?”

Legislative Interim Law and Justice Committee – Missoula Police Department

Another communication that created frustration on the part of a Police Chief who felt his and his agency’s actions were misrepresented was Mr. Ternes presentation before the April 12, 2012 Law and Justice Committee regarding the Missoula Police Department. In the interview with Missoula Policy Chief Mark Muir (Attachment D), he stated that, “This year, at the interim committee meeting, it became clear that there were issues going on with how the Council was being given information from Wayne Ternes. Specifically, they were mislead that the Chiefs and Sheriffs were not reporting to the POST Council with enough detail and that POST needed to be a Criminal Justice agency because information is not being provided. He mentioned a police officer who pleaded guilty to having child pornography who was allowed to resign without information being reported to POST. This related to an issue in Missoula. This is not how it went down and not an accurate reflection of the facts. He [the officer] was indicted by the Federal Government after he resigned, so it was not my place at that point to bring the information to POST.”

When I interviewed Mr. Ternes, I said, “The other concern from Chief Muir I would like to discuss is the [REDACTED] case.” Mr. Ternes replied, “I wasn’t allowed to respond during the meeting. I had a box of files, but the Chair just wanted it to be a listening session. Here is what happened with that one. We have a mess in Lake County, and it was in the news, so people heard about it. Shockley got involved prior to the primary when he was running for Attorney General. When you are a state employee, and are asked to appear before a legislative employee, you have an obligation to do so. In consultation with Shockley and the legislative attorney, I was told they wanted information on what POST needed to do the job, one of which

was mandatory reporting, or cases where mandatory reporting would have made things different. I made no reference to Chief Muir. ██████ plead guilty to child pornography, and it was in the paper. Levi Talkington asked why we weren't dealing with ██████, so I got ██████ file and termination slip, and the termination slip said, resigned. It didn't say, resigned, please call me, so he was used as one example. There were a whole list of examples to show the Council needs a system in place so staff are notified. Once we knew of the felony, I brought it to the Council. I brought the newspaper article and asked for immediate revocation and was denied. Steve Barry wanted more information than just a newspaper article. ██████ came about as part of this report, and there were numerous others listed."

Chief Muir stated that, "Another issue is the way Wayne Ternes responded at the Law and Justice committee – it was disgraceful [stating that the officer was convicted of child pornography but was allowed to resign and was not reported to POST]. This relates to his testimony regarding the officer that resigned which we discussed before – had he said that a former police officer pleaded guilty after department suspension and resignation, it would have been accurate, but that is not what he said. Wayne didn't mention the Missoula Police Department in particular, so I did not address this during the hearing, so I am the only person who knows this was wrong."

As with the Nasset incident described above, it appears there were certain elements of the story left out that lead the Police Chief to perceive misrepresentation of the situation. In this case the perception of misrepresentation stems from Ternes' omission of the fact that the officer pleaded guilty to the federal charges *after* resigning from the Missoula Police Department.

Communication with officials in Ronan and Polson

Another issue raised by review participants included communications with the City Attorney for Polson and Ronan, James Raymond which gave rise to a significant concern regarding the potential violation of law enforcement officers' fifth amendment rights (a concern that spread and was shared by many other participants statewide).

Specifically, in a July 27, 2011 letter from James Raymond, to Winnie Ore, Mr. Raymond states, "The Code of Ethics, at 23.13.203 of your rules provides that a 'fundamental responsibility' of a public safety officer's code of ethics includes ensuring that "the constitutional rights of all are not abridged. Your staff [Wayne Ternes and Clay Coker] stated in my office in Polson on May 31 last past, discussing with me and others its view that the fact that several Polson officers have chosen to remain silent in the face of an inept fish and game investigation – as is their constitutional right under the Fifth Amendment – constituted a breach of their code of ethics and warranted investigation by POST. I understand your director is not a sworn public safety officer and therefore the Code of Ethics does not apply to him; yet I marvel at the hypocrisy. It cannot be that every peace officer in Montana gave up their fundamental rights, a notion anathema to the very idea of "rights," when the put on the uniform, yet that is the position taken by your staff."

In my interview with Mr. Raymond (Attachment J), he stated that, "I believe that in trying to leverage his investigation Frank Bowen contacted POST, so the POST guys, Wayne and Clay came up here and made contact with me in my office. As far as I could tell, their purpose was to get me, the agency's attorney, to agree it was proper to construe our peace officer's refusal to cooperate with Frank was some kind of ethical violation. Also present was Doug Chase, Chief of the Polson Police, and John Stevens, the Assistant Chief."

In my interview with Chief Chase (Attachment DD) regarding the matter, he stated that "I met with James Raymond, John Stevens, Wayne Ternes, and Clay Coker. They never called me to say they were going to meet with the City Attorney. My officers were directed not to submit to POST or FWP. The meeting lasted about an hour, and James Raymond submitted a written statement. He also spoke to the POST Council with Jay Doyle, Mitch Young and I. That was in August 2011, and I never heard a word back. It was obvious to me that the train was coming through the station and if you get in front of it, you will get run over. After 68 years and 44 years in law enforcement, it looked like they were headhunting."

In the interview with Chief Chase (Attachment DD), he also stated that, "I felt like I was being bulldozed, but have been in the business for 40 years, so it would take a lot to bulldoze me. I couldn't understand why this was coming about. Why my officers were being investigated for ethics when there had been no convictions or even charges. Where were they getting their information? I've never experience this with POST."

In the interview with Mike Batista (Attachment U), he stated that, "Lake County is a good example of what can go wrong without proper screening, judgment and discretion. If you are an outsider, you could come to the conclusion that the place [Lake County] is out of control, a lawless county. I believe that perception came about because Fish, Wildlife, and Parks (FWP) started a lengthy investigation into allegations of poaching by law enforcement officers. During the investigation, a game warden stumbled upon old allegations and rumors, some of which had already been investigated, and all of which were old. FWP was not getting anywhere with their investigation, and they needed to reach out, so they reached out to POST and DCI. They reached out to DCI regarding some old allegations which had been investigated or were second or third hand, and we declined to do anything. They reached out to POST and Wayne Ternes and said we have a two year investigation and are not getting anywhere, what can you do to help us? Lake County was in communication with us, and John Strandell had a lot of communication with Wayne. Wayne and Clay went to Lake County unbeknownst to the Sheriff, County Attorney, City Attorney, or the Police Chief, Doug Chase. They went up and met with the local officers and these guys and the meeting between Wayne and the local officers was recorded."

It appears the comments by Wayne Ternes about the possibility of using certification to compel statements from officers created unnecessary concern among officials and officers (I did not find any evidence that compelled statements were actually used by POST staff). The events in Lake County also appear contrary to Mr. Ternes comment at the August 15, 2012 Council meeting, where, in response to concerns about certification actions not being taken in a timely manner, Mr. Ternes stated, "Madam chair if I may and Sheriff [Hoffman -Ravalli], we had spoke briefly about this incident this brings back what we have spoke all at this council about,

this one was very serious, it was a felony, but you have all said we are waiting for the outcome of the court, and that is how that one was handled he was charged, he wasn't working, and we waited for the outcome, and that's what it was. My understanding he gave up his certification during his adjudication in the court, and that was the direction given at the time and with the attorney that was working at the time.... Sheriff You're right, it did take a long time, but the reason for that is that we were waiting for the outcome and that is the court time."

These types of inconsistencies between statements and actions (i.e., citing direction from the Council to wait for a court outcome when being questioned on the lack of timeliness for decertification action versus taking investigatory action against officers in another case where there was not court outcome), appear to have damaged Director Ternes' credibility with local officials.

One important point to note in this matter is that the POST Council Chair stated on August 15, 2012 that there may be times when it is appropriate for POST to investigate before a court outcome, but it is not clear that this was the direction given by the POST Council in the above incidents. In the interview with Winnie Ore (Attachment Y), she stated that "Lake County has been brewing for two years. It goes back to Alan Horsfall and there have been issues there for a long time. I was very aware of Lake County, but remember that the Council's job is to look at things that are not just criminal, but ethics [and other issues that may affect certification] too. I did not listen to the interview that was tape recorded, and Mike wanted to know if I heard it, and I said that I can't muck around in that. Do I have concerns? Yes and no. I trust the MAPA process, and Mike McCarter is a good hearing officer and will sort through the findings of fact and not muck up the quasi-judicial process. The more people that protest looking at something, the more inclined I am to think we need to look at it."

Another issue raised by Raymond in his letter was Wayne Ternes' dissemination of information. In his 7/18/11 letter, Mr. Raymond states that "I have noted no ARM pertaining to POST addressing dissemination of information, although there is a plethora of other applicable Montana law on the subject of privacy from which POST is not exempt. Montana has one of the most stringent privacy legal frameworks in existence. So I find it odd, to say the least, that your staff believed it within this Council's writ to forward the entire file of confidential criminal justice information to the psychologist, a private party, who had examined a Lake County Sheriff's deputy, together with a note – which I attach – in which your staff asks the physician to reconsider his finding of a clean bill of health in view of the contents of the file." Additional Documents From James Raymond (Attachment J).

When I interviewed Director Ternes on this matter, I stated, another concern was that you provided criminal justice information to [REDACTED], a psychologist. Mr. Ternes replied, "No. Absolutely not. It was just our interviews, our stuff. It was our information and we are not a criminal justice agency. The public can ask for information once it's in the process. The issue with this deputy is still ongoing – a variety of complaints."

In my interview with Mr. Ternes regarding the above matters [Lake County, Polson, Ronan], I said, "another major concern that surfaced in my fact-finding was failure to follow ARM 23.13.703. This concern was raised by James Raymond. Mr. Ternes replied, "I'm not sure

which ones he is addressing, I would have to see the investigative files. In ARM 23.13.703, under #5, it says, following review and investigation of a complaint, the director may take any appropriate action, including but not limited to the following, so I am not bound to do any specific thing. I thought in Lake County that we were following the rule. In fact, we met with them and Raymond wouldn't let us finish the investigation. We went to meet with just Raymond. He is the contract City Attorney for Ronan and Polson, but he also invited Doug Chase and his assistant chief, and we sat down and talked about concerns."

I asked Mr. Ternes, "did the issue of compelled statements or Garrity come up in this discussion?"

Mr. Ternes replied, "I remember talking to them about it. This whole state has gone into a frenzy on compelled statements. The advice I've been given by the Association of POST Directors is that the POST Council has the authority to require compelled statements. We've never used that authority, it was just a suggestion and discussion. What happened is you have a bona fide agency, Fish, Wildlife, and Parks trying to conduct an investigation, so in speaking to the investigator from FWP, I told him to let them [the officers who weren't cooperating] know that if they refused to participate, you would turn that information over to us for consideration. To this day, we have never taken action against these people for failure to participate. I've been sitting out for seven weeks with no contact. There was one call from Steve Barry to notify me that Hal Harper was appointed.

We have information in the office that the Council doesn't know of and can't know of. Clyde Petersen gave a good training in April on who the process work – ex parte, and explained it in full, but people want to know. We have so much information in the office we could tell, but we can't because it is ex parte. If you want to know this information, you can sit down at POST – if it is ok with legal. The information we have, especially out of Lake County, is the stuff movies are made of. The stuff I've been told, the stuff I've looked at in sworn statements. The former Sheriff of Lake County, Lucky Larson, told me not to stay in Lake County because it wouldn't be safe. What kind of thing is that to say to a state official? There is stuff we've been privy to and information that needs to go through the process.

There are driving politics, and I knew this day would happen. My closing statement in my interview when I got the job was, if you choose to hire me, I will do the job as written. I am not here to make friends. A POST Director's life cycle is four to five years, and then they move on because of the nature of the business. Especially when the ARMs are written where it is the Executive Director's decision. The Council has the authority to rewrite rules.

The stuff in Lake County has been interesting. At the August 2011 meeting, Doug Chase came down – it is in the minutes. He mentions how his staff was upset with the unknown, and at that time, we had not had a complaint against his people. I don't remember the exact words he used, but he made a threat that we were going to feel what it was like. This listening session didn't just happen. It was planned. Even Muir stated that he wasn't there for rebuttals."

Communication with the media

Another issue James Raymond cited as actions by Mr. Ternes that have damaged trust and credibility were Mr. Ternes' statements to the press. Specifically, in his 7/18/11 letter, Mr. Raymond states, "If your staff gets to make final un-appealable judgments about what

documents have been falsified and talk to the papers about that without any due process...” This statement relates to a Ronan Valley Journal article dated July 6, 2011 (Attachment K, Raymond additional information), which states, “according to POST Executive Director Wayne Ternes, at issue are documents allegedly falsified by Ronan Police Chief Dan Wadsworth that stated a student ‘sponsored’ by Ronan’s police department to attend the Montana Law Enforcement Academy was hired by Ronan Police Department when he was not.” The article also included a quote from Mr. Ternes where he reportedly said, “the problem is that we currently can’t rely on paperwork received from Ronan concerning work history. We will not accept anything from Ronan Police until we clear it up.”

This communication regarding a pending investigation created a perception among Raymond and other review participants that Mr. Ternes provided inappropriate information to the media (i.e., talking about specific case details with the media instead of saying “no comment”). Making statements to the media about case details that are not being shared with the Council due to ex parte concerns appears inconsistent and to have adversely affected credibility.

These types of communications regarding pending case details have resulted in a perception that Mr. Ternes has provided other privileged information inappropriately. For example, in my interview with Chief Mark Muir (Attachment D), he stated, “One of the other questionable issues was the media attention paid to the service of complaints to the officers involved, including the new Chief in Polson. He was off in Idaho fishing and got a call from his father-in-law who read in the newspaper that he was being served with a complaint from POST. It is my understanding that Clay and the former chief from Troy, Mitch Walters, who now has a Process Service business, were going around trying to find these guys and it got back to the media who was being served. This is a violation of privacy rights. The information leaking out to the media appears to have leaked from POST staff or their contract process server. The newspaper reports attributed statements to Clay Coker and Wayne Ternes. The only people who would have known [about this prior to the media release] are the POST staff or the process server, who was involved in turmoil in Troy and in the hot seat himself. I believe Mitch Walters got with Clay, who was formerly the Chief just down the road in Libby early after he was hired.”

When I interviewed Clay Coker (Attachment L) about this issue, I asked, how about the allegation that the service of papers was leaked to the media? The concern is that only three people, you, Wayne, and Mitch knew about the service, so the media leak may have come from one of you. Mr. Coker replied, “I think that when one person got served, that person got the word out. Mitch did not talk to anyone and I did not talk to anyone. I can’t speak for Wayne, but don’t believe he did. I even asked one of the reporters, where did you get this information, and he said he had sources [but would not reveal them].”

It does not appear the media leak in this case was the direct result of Mr. Ternes actions or statements to the press. However, in the context of other statements to the press about pending investigations, the perception and damage to credibility remains.

Another example of media communications that have adversely impacted credibility was cited by Sheriff Harbaugh in his interview when he stated, “then, about 2 – 3 years ago, an Associated Press article comes out where Coker and Ternes had spoken to the media about a certain certification requiring evaluation by a medical doctor to ensure an officer was fit, and

that this could be a liability to agencies as defendant's attorneys could use the lack of an evaluation against the agency. There was no communication to the agencies about this issue, and it was not communicated to the POST Council. The agencies had to read about it in the Billings newspaper regarding this flaw in the system that could affect defendant's abilities to challenge a case. I know it became an issue in one jurisdiction. Tim Barkley, the Sheriff in Fallon County - it became an issue in one of their DUI cases, and the defendant's attorney was demanding to see these records. There was a lot of frustration that got channeled to me. Wayne didn't bring this to the POST Council, and had not notified local agencies. Sheriffs were asking me, isn't POST here to help us rather than create adversarial relationships in court for us."

The interview with James Raymond indicated that Ternes' previous communications with the media may have created or supported a perception of leaks coming from the POST office. Specifically, Mr. Raymond said that, "a lot of these matters were in local papers and the information came from somewhere. You'd have to ask the Journal where they got their information, and they are unlikely to disclose this, but Wayne Ternes was quoted in one or more local articles."

In my interview with Wayne Ternes (Attachment H), I asked, in the matter of Lake County, how did the media get the information regarding the ongoing POST investigations? Mr. Ternes replied, "we had the press calling us, and we consider everything private until it ends up in hearing. Once it goes to the hearing officer, it is public information. So, we have all these files to work up complaints and cases, and the information is private and we can't give it up. We got a subpoena duces tecum from the Office of Public Defender, a demand for us to give them all our stuff. We got subpoenaed from OPD and talked to Deb and she said we needed to quash the subpoena, and the first one got quashed by Lake County Attorney Mitch Young. So, we got a second subpoena from OPD for any information on the folks up there. I emailed Mitch Young, I have a copy of the email – Mitch we have another subpoena for information, and there was never a motion to quash, then we got a call that we needed to answer it, and all the information went to the public defender. They now have all the information, then they use it in court, and then it all becomes public information. It never came out of our office to the newspaper, it came out of court."

Issue 3: Perceived Legislative Proposals that have damaged trust with partners.

Another major issue that has damaged Mr. Ternes' credibility and the trust of Council members and law enforcement administrators were legislative proposals that were presented at the April 12, 2012 Law and Justice Committee meeting. Another issue that damaged perceptions statewide is a draft proposal regarding POST overseeing MLEA that was inadvertently distributed, and Mr. Ternes' follow-up to this distribution.

Legislative proposals presented at the April 12, 2012 Law and Justice Committee meeting

As cited in the preceding section regarding incomplete information provided to the POST Council (Issue 1), several committee members stated that Mr. Ternes was not clear with them on his intent to present legislation for POST to obtain criminal justice agency status, and for the POST Compliance Officer to obtain peace officer status.

In my interview with Dennis McCave, POST Council Member (Attachment M), I asked him, please describe your knowledge of the legislative initiatives to get criminal justice and peace officer status including whether they were discussed prior to Wayne's Law and Justice Committee presentation. Mr. McCave replied, "it's true there have been discussion about these issues, it was discussed, but how it got to the Law and Justice Committee, in my opinion, is you have Jim Shockley who likes to stir things up, and he had concerns from his jurisdiction. We talked for at least a year, but nothing was ever said about needing to take it to the Law and Justice Committee. I made the comment, we never knew this was going to the Law and Justice Committee. I checked the record, in the POST Council meeting, the week before the Law and Justice Committee [April, 12th 2012]. At 5:56, Wayne said we've got a request from the Law and Justice Committee to answer two questions, how are we getting the criminal justice information we need, and how is the system for MAPA working for the POST Council, and from that, the following week, he showed up [at the Law and Justice Committee] with a binder with lots of things including two bill drafts. In his discussion before, there was nothing about it [bringing bill drafts to the committee]. This type of thing has been going on for three years. He does what he wants and we are left in the dark. I was interested in Wayne Ternes' response to those two questions. Then he got up there and gave a presentation on proposed legislation, and it was nicely printed in the legislative bill format."

In my interview with Georgette Hogan-Boggio, POST Council member (Attachment N), I asked, what is your recollection regarding the legislation to give POST criminal justice status, and to give the Investigator Peace Officer status? Ms. Hogan-Boggio replied, "I think it was something brewing in Wayne Ternes' brain that they did not have peace officer status or access to criminal justice information. It came up with regard to certifying out-of-state candidates, and he expressed a concern, so to say it [the legislative proposals] was totally out of the blue isn't completely true, but when they told us at the POST Council meeting that didn't have a quorum – it was in June, but it didn't have a quorum, so we did a phone conference, that is when they talked about the testimony they gave to the Law and Justice Committee. It was at the second meeting. They informed us after it happened. I understand there was some L & J Committee testimony earlier, when I was absent. My reaction was, slow down, this is a big deal to ask for criminal justice information. I was the County Attorney representative, and we hadn't talked about legislation and I didn't feel prepared for it. I wanted to present it to who I represent. The Council was informed after the fact on the legislation. I know there were other ones on the conference call I had missed. They talked about legislation they would look at, such as law enforcement status, and it was my understanding that it would be looked at by a committee, not presented as a legislative proposal."

In my interview with Jim Smith, POST Council member (Attachment O), I asked, what do you know about the three legislative proposals, were you aware of them? Mr. Smith replied "yes, he brought it to the POST Council though a telephone conference call in May or June. There were 10 – 12 items discussed and I believe those items were part of these 10 or 12."

The statements from POST Council members indicate it was not clear to all members that potential legislation would be provided to the Law and Justice Committee.

In discussing the issue with Sarah Hart, POST Legal Counsel (Attachment P), I asked her, what do you know about Wayne's proposal or presentation to the Law and Justice Committee in April 2012? Ms. Hart replied, "it is hard for me to say much about this. I came on in the

middle of May, and when he went was before my time, so I don't know. In June, I was brand new. I had been to one POST meeting on May 30, I was new on board, and on that Tuesday I found out from Wayne or Winnie that I would be going before the Law and Justice Committee on Friday. I talked to Shockley, I wrote a whole memo as to timelines and what the players were doing (Attachment Q). The bottom line is that I was not happy Wayne Ternes had gone to the Law and Justice Committee to present something without the approval of the Council. There wasn't time to get approval from the whole Council, and I wanted to put in a bookmark in case the Council wanted to pursue legislation. It was also a little bit of damage control from the first meeting, and to clarify that the POST Council hadn't put out anything to the Law and Justice Committee, that it was just Wayne Ternes and Clay Coker."

I asked Ms. Hart what the Council's response to this issue was, and she replied, "I have no idea, that was before my time. Winnie clarified that the proposals were from Wayne and Clay only, and I got the assumption that it had been dealt with."

Ms. Hart stated, "when I asked Wayne Ternes about it, he said, he didn't know what to do, so he called and asked the LJIC what they wanted me to do and LJIC told him. I don't think he should have done it, but can see how it would be done without realizing the implications. Shockley is a very forceful person and wanted the legislation to go forward, and I think these changes will be helpful to the Council. I went to the meeting and put in a bookmark, then went back to the Council who said that they didn't want to do it now, so I said thanks but no thanks [to the legislature]."

Ternes presentation on April 20, 2012 also caused concern among law enforcement associations and administrators throughout the state. For example, Jerry Williams, President of the Montana Police Protective Association (MPPA) indicated that these actions created a perception by him and among some of his members that POST was trying to garner more power and authority, which did not appear to them to be the primary functions of the agency. Specifically, Mr. Williams stated that, "also, as the legislation came forward from POST, we became a lot more involved. Specifically, the legislation to designate POST with criminal justice agency state, to designate the Compliance Officer as a Peace Officer, and for the POST to take over MLEA. I looked at this as a takeover." I asked Mr. Williams to describe why he saw this proposed legislation as a takeover. Mr. Williams replied, "based on the two previous pieces of legislation, it looked like a POST takeover of MLEA. We don't know where it came from, and were concerned because I see POST as dysfunctional. Not the Council, but the staff. I look at their function as providing and approving training, and providing certification. However, they have spent much more time on investigations as opposed to doing what they are supposed to be doing – providing and certifying training."

In my interview with Sheriff Brian Gootkin (Attachment CC), he stated that, "he [Wayne Ternes] also went and testified in front of the Law and Justice Committee with Shockley regarding Lake County. I attended another Law and Justice meeting about some other stuff, and Shockley said something derogatory about law enforcement in Montana. Shockley was generalizing the lack of law enforcement in Lake County. Perry Johnson was there, and was livid that a senator said this in a hearing, but it seemed like this is information he was being fed [from Wayne Ternes]. At the meeting last month, I asked, who is Wayne's boss? Winnie Ore said it is the Council, and I asked if they were aware he was going to testify before the Committee, and if

they authorized it. When I asked, it appeared the Council had not authorized the testimony. Wayne wanted to do it, and it seemed like a big set-up, like it was planned to get the legislature to implement these bills. Everyone was wondering what was going on here, why was it before a legislative subcommittee if DCI had already investigated it? At the meeting, Shockley said, listen up sheriffs, this is a great way to pass the buck, but I was not elected to pass the buck, and am going to deal with issues in my office. Either he did it on his own, or Winnie said, go ahead, but I am not sure that the [entire] Council knew what he was going to do.”

In my interview with Wayne Ternes (Attachment H) regarding the information presented to the Law and Justice Committee, I asked, please describe your perspective on you presenting legislation to the Law and Justice Committee. Mr. Ternes replied, “there was no proposed legislation. There were two questions I was asked to address, are we able to do our job now, and what will it take to fix it. It would take legal changes to fix it. That wasn’t proposed legislation when you have two questions asked of you. It wasn’t on behalf of the Council, it was asked of me as the director.”

When I interviewed Clay Coker about the presentation, I asked him to tell me about the presentation at the Law and Justice Committee. Mr. Coker replied, “Dennis brought up the question at the previous meeting, and Wayne Ternes found where he said that he was invited to speak at the law and justice committee meeting. The proposed solutions were drafted in the legislative bill format, and that was my fault. I wrote them up a long time ago, and wanted to do them in the appropriate format, so I used a legislative template. Shockley asked the question, and here was the fix. The roadblocks and issues were discussed between Wayne and Shockley, and I don’t know that Wayne meant for it to come across as proposed legislation. I put the packet together when Wayne was out of town. He told me what to put in the packet. The content was sanctioned by Wayne, but I’ll take responsibility for the format.”

The statements from Ternes and Coker indicate that it was not Mr. Ternes intent to present legislation for committee action, but rather to provide information in response to the issues upon which he was asked to testify. Mr. Coker indicated that the format of the information (i.e., in a legislative bill format), was the result of his work years prior, and that he did not intend this to constitute a legislative proposal. Regardless of the intent, the timing and presentation gave rise to several concerns on the part of Council members and external partners. It appears this presentation should have been more thoroughly considered and vetted before being provided to a legislative committee.

Another issue that created concern among POST Council members, law enforcement associations, and administrators was the draft proposal (Attachment R) for POST to provide oversight of the Montana Law Enforcement Academy (MLEA). Exacerbating this concern in the eyes of several participants was Mr. Ternes’ response to the incident through an email that was widely dispersed.

In addition to the quote from Sheriff Harbaugh cited earlier, he stated, “then, there was the proposed legislation that POST take over MLEA, and that was a new one to me. This was a poor decision process. The Council should hear about these types of proposals before anyone else does. These should have been vetted by the Council, and to go off and do it without checking with the Council is inappropriate. On the POST Council, we have to be made aware

before these things go out. If one of my officers put me in this situation, they would have been called out on the carpet the first time, and the second time would be their last.”

In my interview with Kevin Olson, he stated that “Mike Anderson and Steve Barry were on the POST committee looking at proposed legislation. There were three things missing from the list, 1) POST taking over the academy, 2) POST getting Criminal Justice information or status as a criminal justice agency, and 3) Clay becoming a peace officer. If Steve or Mike would have called, it would have been OK, and Wayne or Clay didn’t say anything. We found out the proposal was sent from Clay to Alex Betts, who took it to the Colonel (of the Highway Patrol), who forwarded it to Batista. It wasn’t part of the POST legislative review process. Within a week, we were getting phone calls from administrators around the state.”

In my interview with Mike Batista (Attachment U), he said, “I follow the Law and Justice Committee and what they are doing. Ali Bovington and I were asked to be present at a meeting. Senator Jim Shockley had concerns regarding Lake County, and that was when I first learned that POST was there to present proposed legislation regarding criminal justice agency designation and peace officer status. They were followed by us and by FWP regarding Lake County. I want to say that there was a draft of the proposed legislation provided, but cannot remember for sure. I don’t go and testify before the legislature on legislative proposals until I get the ok from the Attorney General or the Chief of Staff. My sense of this is that it was a direct communication with Wayne. Later came the POST proposal to take over the Montana Law Enforcement Academy (MLEA). Law enforcement was getting frustrated with POST not returning phone calls and not being in the office. I got a note from the Colonel of the Montana Highway Patrol, that he just had this draft bill presented to him and run by him to see what he thought by Clay Coker. I learned about it through the Patrol. A week later, I put in a call to Winnie and she said she didn’t know anything about it, and that she was out of town, so I set up a meeting with her. It was actually a bill draft in the bill draft format. Kevin Olson was frustrated. He tried really hard to help out POST. Kevin never got an apology, then got an email from Wayne saying that putting together legislative proposals was in his [Coker’s] job description. After the meeting, Clay said, “things are not as they appear.” Winnie said that it was a personnel issue, and that they dealt with it as a disciplinary action with Clay. I never got any follow-up on the issue from POST.”

When I asked Wayne Ternes about the proposed legislation for POST to take over MLEA, he replied, “that was a conversation between Clay and Alex Betts, and then Alex took it to his Colonel and it went out. I talked to Clay and reprimanded him for that. It was blown up just to use, and I will stand behind constructive termination. I said to Mr. Ternes, that when I interviewed Clay, his recollection was that you were out of town, and there was a disagreement between MLEA and the MHP about the MPAT test, and so you asked Clay to send the draft to Alex as one possible solution to the issue. This took place while I was gone from the office. I was only notified by phone that it took place after Clay had already given Alex the document on his own. I didn’t have any part of this. I did not tell Clay to send it to Alex. I did not ask him to send it to Alex. I was notified that he gave it to Alex after the fact. After I returned to the office after the incident, I directed Clay to not give out anything unless it comes across my desk. Clay gave the document to Council member Alex Betz in Clay’s office. It was only meant to be communication between Clay and Alex.”

In my interview with Clay Coker (Attachment L), he stated, “the one that was pinpointed to me was the academy legislation thing – they were looking at me. When I first started in 2010, before the 2011 session, Wayne Ternes told me to look at the statutes, such as the one where a mayor can appoint someone as a police officer for 30 days without training, to see where we could improve. So, I played with statutes and wrote drafts in the bill format, and one of those was about what it would look like to move MLEA under POST like it is in most states. So, I wrote these things up in 2010 and 2011 – three or four versions of legislation. I also addressed some issues like getting the terms constable and marshal out of statute since we don’t have these in the state. Wayne was out of town and got wind that there was a beef between MLEA and the MHP about the impact test – it wasn’t validated in our state, so the question came up, why isn’t POST involved in setting academy standards. So, Wayne Ternes said, hey, show Alex Betts that thing you wrote up about POST taking over MLEA, so I sent it to Alex as a possible solution. I did not write it as a draft piece of legislation, plus Wayne called me and told me to do it. I tried to talk to Kevin after the meeting, and I told him things are not as they seem. It wasn’t an attack. I wrote it up two years ago and was told to give it to Alex. I told Kevin Olson that things are not as they seem. An email went out [from Wayne Ternes] saying it was done by me, and implying I was disciplined for it, but I was never reprimanded for it because I was doing what I was told. Winnie said it was dealt with as a personnel issue, and made it look like it was me.”

When I interviewed Alex Betz (Attachment S), I said it is my understanding Clay emailed you a proposal for POST to take over MLEA. Can you tell me how this came about? Sgt. Betz replied, “it wasn’t an email. I was sitting in Clay’s office talking about things, and at that time, I thought I was on the Policy Committee and the Ethics Committee, which I learned changed in August. It was a proposal, and Clay asked, what are your thoughts on this? I said that POST has a big stake in what goes on at the Academy and that I would push it forward. I gave it to LTC Butch Huseby who was on the grounds at the time. If you read the proposal, you will see it wasn’t a takeover, but more of an oversight role. My job is to serve as a conduit, so I took it to the Lt. Colonel to get his thoughts. He got a copy and Colonel Tooley got a copy and forwarded it to everyone. After getting their reaction, I told Clay that this is not a good idea, and figured it was done.” I said, so this was a miscommunication or misperception? Betz replied, “I agree 100%. Clay Coker said, let me know what your thoughts are, and based on my leadership’s reaction, it was clear it was a no go.”

I asked Sgt. Betz to review Clay Coker’s account of the incident (cited above) and to respond. Sgt. Betz stated, “it was not an attack whatsoever, and I don’t think anyone in POST wants to run the academy. Have you seen the proposal, it says POST is already approving the curriculum. It wasn’t an attack, but was probably a really bad way of bringing the issue to light. Kevin Olsen and his staff are and have been doing an incredible job, and I as the Training Sergeant for the MHP will continue to support their efforts in training the Law Enforcement Professional they are tasked with training. There wasn’t really a beef with the MPAT. The numbers were skewed and it just wasn’t quite as fair as they thought it was, and we were trying to figure out how to fix the physical test. There was never really a beef between MLEA and MHP, but rather an issue. This was another one of those things where communication broke down somewhere. There was no beef, we just had to fix an issue.” I asked Sgt. Betz, do you know if the issue with MHP and MLEA regarding the MPAT related to or was the impetus

for Clay to provide you the proposal? Sgt. Betz replied, “I don’t remember the issues being related, but they could have been – either a specific concern or a general concern. I don’t understand the reaction, but I also don’t understand Montana politics. I don’t know what went on between Wayne and Clay. I got it in my hands, took it to my boss and he said, no way, and then it went viral, and I felt I was responsible for everything going wrong in POST. I’m still trying to figure out what I did, and when I showed my boss, I was surprised by the reaction. I didn’t have knowledge of what [the other issues expressed by the Chiefs and Sheriffs] was going on. I asked, so Clay gave you a hardcopy, how did the proposal get emailed around the state? Sgt. Betz replied, “yes. He gave me a hardcopy and I showed it to Huseby at MLEA. I walked over to the Ohs Building and the Lt. Colonel was there, and I said, take a look at this. He said he wanted a copy of it, and the next morning Col. Tooley got a copy of it too. I didn’t understand why we couldn’t just sit down and discuss it. It seemed like it went viral without any discussion. This is one of the issues I have with the email thing. Back in the day, we used to pick up the phone and talk. Now we hit send, and it affects communication and how we relate to people. Clay and I were just sitting around solving the world’s problems and having a discussion.” I also said, “Clay and Wayne have very different accounts about how this came about. As you read, Clay remembers he was directed by Wayne to send it out in relation to the issue with MLEA and MHP, and Wayne says he had no knowledge it was going out until after the fact. Sgt. Betz replied, “maybe this is a miscommunication between Clay and Wayne... and me, throw me in their too. I just don’t know why we can’t all get along, and we have asked for help. I don’t understand why we can’t just pick up the phone and talk.”

There appears to be some disagreement or miscommunication between Coker and Ternes as to how this all came about, but it also appears it was never intended as a formal legislative proposal. Council member Betz’ interview made it clear that this was just a conversation and exchange of information between him and Coker that was distributed in a manner that was not their intention.

Issue 4: Office administration issues not addressed in an effective or timely manner.

Several participants in the review cited examples of what they felt were inadequacies in the administration of the POST office. These issues include mismanagement of the agency budget, failure to update training and certification records in a timely manner or without repeated reminders, lack of a policy or procedure manual, inadequate office coverage or failure to respond to inquiries, and outside business interests potentially conflicting with the established Executive Director job description. There are elements of these issues that are outside of Mr. Ternes control (for example, delays in updating training or certification records are in part, the result of staffing issues and resource limitations), so I asked participants to focus on examples of issues they felt were within his control.

Mismanagement of the agency budget.

POST Council members and law enforcement association members expressed a concern with what they felt was mismanagement of POST resources and budget. These concerns include expenditures that do not align with the agency business plan, and offers to provide funding to law enforcement associations rather than expend the funds on critical agency needs.

Specifically, during the August 15, POST Council meeting, Mr. Ternes provided the following report regarding the disposition of the agency budget:

"I'll let you know how the year ended. Our expenses cover a variety of issues including office supplies, training board meetings and attorney fees. In June alone, our Agency Legal Services bill was \$6,700. This allowed us to have some money left at the end, and I sent out an email regarding rent. Chris told me it was allowed, so this year, we were able to transfer \$25,000 to MLEA for rent and also assisted MLEA in paying for a training, I don't remember what it was. At the end of the year, we were able to take our base year down to 0, so we did not have to ask for a base year adjustment. If we did not spend it, we would have to ask for an adjustment. I worked with CandiMullenbach at DCI and Central Services on this. We started out the year with a full budget. I get monthly reports. Our SABHRS report first goes to Mike, and he gets them and forwards them to me and I review them for expenditures to ensure we are not paying for things for other agencies."

Steve Barry, POST Council Member, responded, "one comment. This is unusual and we will see an upswing in attorneys' costs and other expenses in the future. In terms of managing budgets, we have nine goals, and not one of them related to funding MLEA for rent. If you get to year end, and are projecting budgets, that is where the money needs to go, and I don't see any of the \$25,000 going to a contractor on the database, or for an assessment, or for policy support, and these are issues we need to look at."

In my interview with POST Council Member Dennis McCave, he stated, "the committees don't do anything. Before, the subcommittees would get resources, but where are we now? We are told that we don't have the budget to provide subcommittees with resources, but we do have the budget for him [Wayne] to do all sorts of trips and trainings. Then, at the end of the year, we get an email from Wayne Ternes saying that we have a \$25,000 surplus that we are going to give to MLEA, which appears to be incompetence in managing the budget."

In my interview with POST Council Member Tony Harbaugh, he stated, "another example is in mid-April, I got an email from Ternes saying that POST had excess funding left over and wanted to give \$2,500 to the Sheriff's association to pay for a training. Every time we are at a Council meeting, I hear about how they need more help and about why they don't have the database up to date. I went to a Sheriff's Office meeting in May and found out that the other two associations had gotten this email too. So, I emailed Wayne Ternes and said, wouldn't it make more sense to redirect this money toward hiring help? If you are going to allocate money, let's go back to our priorities – getting some office help, if there were a legislative proposal for that, I'd support it."

Sheriff Harbaugh also stated that, "other concerns relate to Wayne's ability to run the office. This has come from other law enforcement sources. Trouble getting calls returned, trying to contact the office by email and not getting any response. With only three staff people, I have gotten complaints that all three of them are going to conferences, and no one stays behind to man the office. POST staff needs to work diligently to have someone answer the phone and to get back to people. People have called, left messages, continued to call, and gotten no response."

Failure to update training and certification records in a timely manner or without repeated reminders.

Most of the law enforcement agency administrators who participated in the review expressed a concern with POST's failure to update training and certification records in a timely manner or without repeated reminders. Interviews with POST staff appear to indicate the influx of training records is cyclical, that database modifications could facilitate the process, and that this issue has been ongoing for some time.

In my interview with POST Council member John Schaffer (Attachment T), I asked, when did the difficulties you experienced with certification records take place? Lt. Schaffer replied, "it was ongoing and even recently, in 2011, an officer had to resubmit his command certification paperwork two to three times, and it took a process of close to a year. Another officer sent in his educational transcripts from college several times and they were lost so he had to re-request the transcripts. After the second time, we said, no, we are not going to send the original transcripts, we'll send a copy."

In my interview with Mike Batista (Attachment U) and John Strandell, the Criminal Investigation Bureau Chief, I asked, are there any other issues affecting credibility or relating to compliance with law/policy? They responded, "One investigator had to wait two years to get a certification." (John Strandell joined us and provided the following account): "██████████ was trying to get an advanced certificate. Prior to DCI, he was at Gambling Control, and wasn't able to get a response from Wayne, so I said that I'd get on it. Years had elapsed, so it was pretty frustrating for ██████████. His previous bureau chief, Jeff Bryson had also tried to get it. I called Wayne and he apologized for it, admitted he should have done it previously, and got it done."

Administrators also indicated that they understood staffing limitations are impacting the updating of training and certification records, that some of these issues can be attributed to human error, and that in some cases (e.g. the Highway Patrol), the process is working. For example, in the interview with Chief Mark Muir (Attachment D) he stated that, "I have heard a lot of complaints. I can't give personal examples that I can lay at their [POST staff's] feet, but an number of members of the Chief's association did not get POST credit hours for courses they attended in 2011, but you never know how to attribute it, but some people indicated that they had signed on a line right below people who did get credit. I think a good deal of the issues with training records has to do with inadequate staffing. But, not having a process in place to coordinate and verify and deal with concerns is a problem."

In my interview with Chief Nasset (Attachment F), he stated, "with certification, we've never had a problem, but I have heard from officers that their records were not updated as soon as they should be or at all, but everyone makes mistakes."

In my interview with Alex Betz (Attachment S), I said, one of the concerns was a lack of timeliness or completion in getting training certificates updated. What has been MHP's and your experience in this area? Sgt. Betz replied "I've always, my guys have always been certified. There is a wait time because we have to wait to have a meeting. I put a lot of onus back on the troopers, and I have a good administrative assistant who keeps track of everything. When we've sent paperwork in, we've gotten good responses."

As stated earlier, the interviews with POST staff appear to indicate they influx of training records is cyclical, that database modifications could facilitate the process, and that this issue has been ongoing for some time:

In the interview with Tana Meuer (Attachment V), I asked her to please describe the situation with the data entry in relation to some of the complaints regarding training information not being updated. Ms. Meuer stated that, “we’re all caught up now. It’s kind of a pattern, and we get concerns every year about this time. I think it is because the end of the fiscal year is June, so a lot of the agencies are doing their training before the end of the year, so we get inundated in July, August, and September with training updates. I am the only one that does data entry, and I enter data when I can get to it. Another issue is affected by training updates are agencies get paid by certification. If an agency pays by certifications, someone’s transcript isn’t relevant until it is time for the pay adjustments, then they would like it done right away. I do not think that keeping track of training for agencies is one of our statutory duties, but it is a perk we provide to agencies. I asked Ms. Muir if POST has made any efforts to improve the database to expedite updates? She replied, “we sat on hold because it was not a priority for IT. I’ve been here four years, and we’ve been through five different programmers in that time, so we make do with what we have. If we could get our own programmer, we could get it done. I don’t know if it is a budget thing or if we have to stay with state IT. Wayne told me a programmer from Arizona’s POST could come do it, but that it was a budget thing. We do a lot of manual work now in the old database that could be eliminated if it were improved. When POST was under the Montana Board of Crime Control, they had about nine people doing data entry. I was working at the academy, and I did some of the data entry too. The temporary support has been here since August 6th and got us all caught up.” Ms. Muir also stated that, “The data entry has been an ongoing issue, so this complaint doesn’t bother me, but it seems to have escalated because of what is going on, because of the other issue [the concerns that were expressed at the meeting on August 15th].”

In my interview with Clay Coker (Attachment L), he stated “the field also complained that we are behind on data entry. However, one person is doing it now versus nine people doing it before when POST was under the MBCC. We brought in a temp, [REDACTED] wife, and she came on the first of August. Life is better now than in the three years I’ve been here. The EPP stuff is ok, it’s in. Eileen showed me how to read the state system, and trained Tana about Excel spreadsheets. We have cleaned up our records from 7,000 names down to about 4,000 names. The volume is the same as it was five years ago, but there is now only one person doing it. I asked Mr. Coker, have you looked into a new or enhanced database to facilitate the data entry? Mr. Coker replied, “we were at the mercy of state IT. I know this program could do more for us than it is doing. For example, with the applications for upper-level certification you have to meet requirements for a certain number of years experience and a certain number of hours of training in certain categories. Now, I have to hand-count this stuff, I have a lot of man hours into counting hours. There are thirteen categories of training such as leadership, use of force, vehicles. The program could categorize it and tell if a person is eligible, but now we have to do it manually.”

In the interview with Wayne Ternes (Attachment H), I asked, regarding the complaints about the training records not being updated, why hasn't the database been improved to expedite this process? Mr. Ternes replied, "I don't have my own IT staff, so we are at the mercy of DOJ IT." I asked, can you hire your own? Mr. Ternes replied, "absolutely. In fact, someone from DOJ suggested we hire a person. Crown Point will do one for \$60,000, and then will charge a maintenance fee, but our annual operating budget is \$90,000. I would love to improve the database and have others enter data [e.g. through a web-based application]. However, if other people enter data, how do you know they actually went? Clay went to the Association Conference a year ago at Big Sky, and no one was at a class. When he went to the room where everyone was supposed to be, there was no one there. We had a class that coroners had to attend, and several of the class left halfway through the second day at the lunch break. I asked Mr. Ternes if maintaining training data a statutory or administrative rule requirement? Mr. Ternes replied, it says we set standards, but does not say we have to track it."

Lack of a policy or procedure manual.

Another issue of concern cited by participants is the lack of a consolidated policy and procedure manual for POST. Several participants cited that this failure is due, in part, to the fact that the POST Policy Committee has not been active. The job description for the POST Executive Director indicates it is the responsibility of the Executive Director to develop and implement POST operational policies, procedures, guidelines and standards that agree with POST requirements and objectives. Several participants felt the Executive Director is responsible for performing this function independently or securing the resources necessary (e.g., contract or staff assistance) to fulfill this critical function.

In my interview with POST Council Member Chief Jim Smith (Attachment O), he stated, "I think Wayne Ternes dropped the ball administratively. He has been director at POST since 2007, and has never produced an operating procedure. The first thing I did when I took over as Chief of Police was to revamp the policy manual and procedures. Since 2007, he has not produced anything for us to review as far as a policy manual, and that needs to happen. The investigator position is relatively new. It was approved in 2009, and Clay Coker was hired in December 2009. It is a Compliance Officer and Investigator. Compliance includes [ensuring agencies are] sending paperwork to POST and ensuring paperwork is up to date. Clay traveled a lot the first year to see offices and check training and personnel files to ensure they were what statute said they were supposed to be. Then he started looking into complaints in late 2010 or early 2011. When I took the seat on the Council in January 2011, he had two or three investigations into ethics violations that were presented to me in May or April 2011, and the POST Council voted to move toward revocation, and these actions still aren't done. I assumed he had a manual, but apparently that never happened. He never did a policy or procedure manual and got it in place. I believe that in the last thirty days, as Acting Director, Clay Coker has come up with a policy manual."

In my interview with POST Council Member Dennis McCave (Attachment M), he stated, "the Policy Committee. The last meeting, there were concerns regarding the lack of policies and procedures, and it is asinine that we have had no policies developed for four years."

In my interview with MPPA President Jerry Williams (Attachment AA), he stated, “they do not have a specific policy manual at POST. Winnie covered that question up. I asked for copies of the policy manual and compliant form, and still haven’t received a thing. I was assured by Winnie I would get them, and haven’t.”

When I interviewed Clay Coker, he showed me a draft policy manual that he had compiled using sources such as the Montana Operations Manual, POST Council Resolutions, the Administrative Rules of Montana, and guidance from the Department of Justice Agency Legal Services.

Inadequate office coverage or failure to respond to inquiries,

Information from participants indicated that external constituents feel there is inadequate Office Coverage (numerous constituent complaints), that this issue has been going on for some time now, and that the POST Office is in the process of implementing solutions to this issue. Several participants, including the majority of law enforcement agency administrators, expressed a concern with the lack of availability or lack of response from Mr. Ternes.

In my interview with Sheriff Burdick (Attachment W), he stated that, “there is a secretary at the POST Council, so there is no reason that issues should be lost or phone calls not returned. There is a secretary that should be there from 8 – 5 Monday – Friday, a Director, and a Compliance Officer, so at the very least, phone calls should be answered. People have called a number of times for the office at the POST Council and without fail, they get an answering machine and their calls are not returned. There are many times when the answering machine is full so you can’t even leave a message.”

In the interview with Sheriff Gootkin (Attachment CC), he stated that “with MSPOA, concerns started to surface. Sheriffs were not being involved in personnel issues in their jurisdictions, and POST was not answering phone calls. I asked my training people if this was a pattern [failure to answer the phone or return calls], and they told me it was since Wayne Ternes took over. I looked into this when I was the Undersheriff.”

POST Council Member Dennis McCave (Attachment M) said that, “I was up there [at the Capitol] to testify on suicide bills with the Law and Justice Committee in the morning, and Wayne was there with Clay and Tana at the Capitol. I was scratching my head wondering why Clay and Tana were there. Why weren’t they back at the office answering phones and entering data? This emphasizes his lack of administrative mentality.”

In the interview with Police Chief Mark Muir, he stated that, “I also attribute this problem to the fact that for a one-hour presentation to the Council of Mayors, Wayne dragged the entire staff to Bozeman and they were all out of the office the entire day for a one-hour presentation. As much as they complain about being short-staffed, this seems like a bad use of staff time. My personal history with trying to get answers from Wayne is old news. I resorted a long time ago to doing it through email, and don’t try calling anymore.”

In the interview with Candi Mullenbach (Attachment A), she said that, “in the summer, July 25, 2011, I scheduled a meeting with Wayne Ternes in February, and when we showed up for the

meeting, he wasn't there. We tried to call before going out there because the roads were bad and got no response, and when we got out there, he was not there. Kim, who is the fiscal technician, experienced a lack of responses. Kim struggles with getting information from Wayne Ternes in a timely manner, such as procard logs. We've required that these are submitted on a weekly basis, but they continue to send information in once a month. The other thing that makes it difficult is when Wayne Ternes stays in a hotel, he typically upgrades and puts other charges on the card, and reimburses the state through the travel expense voucher. We talked to him about the difficulties this was causing. It took 3 – 4 hours to see if Wayne was paying the right amount, and this had to go through three different checks, so we ended up spending 12 hours to reimburse him \$2.50. We told Wayne to put it on his personal card and we'll reimburse the state rate. I asked Ms. Mullenbach when she instructed Mr. Ternes of this, and she replied, "At the March 28 meeting." I asked, how long did that go on, and did it happen after the March 28th meeting? Ms. Mullenbach replied, "it happened at least a couple of times, and it did happen after the March 28th meeting." Mike Batista interjected that DCI also tried to address this through phone calls, and that Wayne Ternes would not call Kim Moore back about these issues.

In the interview with Wayne Ternes, I asked him to provide his response to the concerns regarding failure to answer calls and to return messages. I also mentioned that both Dennis McCave and Chief Muir expressed concerns that he brought all staff to the Law and Justice Committee meeting, and that he brought all your staff to a Council of Mayors meeting rather than staffing the office. Mr. Ternes replied, "one thing about it, do they want me to be there, or do they want staff exposed and able to do their jobs? The staff can answer questions, and I will not pretend I know everything. With the Law and Justice Committee, it was my decision for them to go, TanaMeuer and Clay Coker have information that I didn't. TanaMeuer went to the league of cities and towns. We would leave messages on the phone indicating we would be out of the office. I found out this summer about the technology thing. If TanaMeuer's phone rings over, it goes to the academy. I am told by the Academy it is a ton of calls, but no one logs them. One employee said it was no problem, and the other said it was a problem."

In the interview with Clay Coker (Attachment L), he stated, that "Wayne was gone a lot last year. His mom died and he had a friend die. He also went to a meeting of the international directors of POST and went to Billings a lot." I asked Mr. Coker if POST does training and if this is one of the reasons Mr. Ternes was gone. He replied, "he has his own consulting business, so the training he does is on his own. He has his own private consulting business and does that on his own time. I used to teach ethics, and I am certified to teach firearms, so I am available, but I think it is mending fences time." I said to Mr. Coker, another concern that came up was staff travel, particularly when you all leave the office together such as the mayor's conference. Mr. Coker responded, "the mayor's conference was a quick overnight in Bozeman. We're staff and it was a small meeting with two portions and two different breakouts. Wayne spoke to the mayors, and we do the part on hiring and qualification for appointment, so me and Tana went. We also went to the MACOP, MPPA, and MSPOA joint conference to answer questions about compliance with hiring and getting people on board. I went to the police side and talked about this while Tana was on the sheriff's side talking about other issues, then I went to the sheriff's side while Tana talked to the police side. Wayne was out of town and not at these meetings. There are a number annual trainings. The mayor's academy,

the Sheriff's training at MSPOA, the joint MACOP, MSPOA, and MPPA conference, and the Board of Crime Control conference."

Private business interests potentially conflicting with the established Executive Director job description

Another concern raised during the review is that Mr. Ternes' private business related to conducting training for law enforcement agencies may pose a potential conflict of interest with his established job description. When I interviewed Mr. Ternes about this concern, he stated that, "I have a private business. I do concrete finishing, roofing, siding, its whatever." I asked, *do you still do law enforcement-related consulting or training as part of your side business?* Mr. Ternes replied, "my bet is that Dennis McCave brought this up too. At the beginning, my position description stated I would conduct training as POST director, so there was no way I could do training as part of my private business. I could not do contract training in Montana, but I could do it in other states. I did it in Hawaii, I kept busy. At a Council meeting, a motion was made and the Council decided training would not be part of my position description. Once it was agreed upon by the Council that is wasn't part of my job duties, it was no longer a conflict of interest for me to do training. I haven't done a lot, I did two in Glendive. I took vacation and it was on off-duty time. Also, as POST director, we meet with officers at MLEA and speak at conferences. If it is in my PD, my contract training would cease."

Review of the current position description for the POST Executive Director indicates that the position is responsible for Training Coordination and Technical Assistance (25% of the time), which involves coordinating training programs, developing or approving program curricula, and conducting ongoing needs assessment for the certification and training of law enforcement and public safety personnel. The Council will need to clarify with Director Ternes as to whether there is an ongoing expectation for the Executive Director to conduct and approve training (in which case it may pose a conflict of interest for him to conduct training on this subject matter), or if it is the Council's intent to remove this responsibility from the Executive Director (and the position description should be updated accordingly).

Issue 5: Lack of timeliness, perceived lack of action, and lack of communication regarding decertification issues.

Another concern voiced by law enforcement administrators was a lack of formal communication with agencies about complaints against their officers. Brian Gootkin at the August 15, 2012 meeting, referenced the list of current investigations provided at the meeting and told the Council, "this is the first I have seen that there are three open complaints against my office." When I interviewed Sheriff Gootkin about the issue, he stated that, "I talked to Jim [Oberhofer] to get clear on the POST process. I know we fill out a slip, but do we make a recommendation? Jim said that it is a two-way street that the POST communicates with the agency and vice versa. Jim said that he did open investigations as POST director, and that the first call he would make was to the Sheriff or Chief, or the Division of Criminal Investigation if necessary, and then it was his job to bring it [the findings] to the Council. The way I understand the process is, I gather the information and pass it along to POST, and if they have questions, they will ask me to come down and give my opinion. There may be more than just the specific incident [to consider]. For example, we terminated a deputy for stealing money out of an ATM, but in addition to this incident, he had two letters of reprimand for dereliction of duty. We sent the information to POST, and there is still no decertification. I don't know if Wayne or the POST Council have addressed it yet. It was just recently adjudicated, within the last couple of months. At the meeting in Helena on August, I found out that there were three open investigations on officers in my office. Chief Clark from Belgrade asked me if I was aware of the three open investigation in my office. One or two of them opened last year. I asked why I hadn't been notified at the meeting, and Wayne tried to explain that he heard about one case on the news, or that in another case, an inmate had contacted POST. However, there had been no contact letting us know what was going on. After the meeting, Wayne tried to explain how he received the information [on the deputy that stole the money from the ATM]. He said that the deputy who stole the money was in Ennis and the Chief contacted them. I checked with the Chief and he said, no, POST contacted me. I didn't know how he found out about it, but Wayne finds out information and starts his own investigation. We also had a detention officer case that opened last year. A deputy assaulted a female juvenile. It was in the news, and that is how Wayne found out about it." I asked Sheriff Gootkin if he knew if POST has a specific policy about notifying the administrator in these situations. He replied, "I thought there was something that said he had to notify the administrator. You will want to check with Jim Oberhofer on this." I asked, when were the concerns regarding the lack of notification to the administrator first brought up to POST? Sheriff Gootkin responded, "when Lake County blew up was when the MSPOA heard about it. Instead of returning phone calls updating training records, and maintaining the certification program, he wants to police the police, and go out and investigate law enforcement."

When I interviewed Mr. Ternes, I said, "another specific example was Brian Gootkin's concerns regarding the deputy who stole money out of an ATM. Specifically, Sheriff Gootkin said that he notified POST, but that you later indicated that the Ennis Police Chief notified POST." Mr. Ternes replied, "I got a call from the Ennis Police Chief. We spoke on the phone, or someone from the agency called me and asked, what are you going to do with the former Deputy from Gallatin, and I looked at the termination slip and it said, terminated involuntarily for policy violations. There was no further information provided by Gallatin, all the information was provided by the Ennis police. Again, the Council has no mandatory requirements. Ennis caught

him and he did it. He was a Gallatin County employee at the time he was arrested. The listening session was a feeding frenzy, and Brian Gootkin jumped up and said, there are three from my department on the list and no one told me about them. I talked to Brian at Jorgenson's after the meeting. I told him he said there were three on the list, and said let me tell you about it. On the first one, you, your wife, me and Lisa Hunter were talking during [a break at] the Special Olympics Torch Run Kick-Off Conference, and I asked why we weren't notified about the guy who struck a female juvenile as reported in the paper. I talked to Cashell and it was on the advice of the MACO insurance. The second one was the guy in Ennis, and the third one, I said, you know it came to POST because an inmate got a part of his digit cut off when the jailer slammed the meal slot because the family came to you, and you knew we were in the process. We have no report from your agency to us."

In my interview with Undersheriff Perry Johnson, he stated that, "we asked for a decertification on a deputy sheriff who stole ammunition from our ammo bunker – about 40 – 50,000 rounds. We suspended him with pay pending an investigation; called DCI [the Division of Criminal Investigation] for the criminal investigation, and opened an administrative investigation. We interviewed the deputy, [REDACTED], and we submitted the paperwork to have him decertified. One issue we have with POST is it's a black hole. You can write letters and make phone calls, and you never get the benefit of a call back. We didn't get a contact from them. We're trying to take a bad apple out of the barrel and send a message to the community that we're doing the right thing. Undersheriff Johnson also said that, "on [REDACTED], we never were contacted and don't have a correspondence from them. You can go into the POST website, but no names are named, so you have to put two and two together. There was nothing for me to put in his personnel file, nothing for me to tell a prospective employer."

In the interview with Chief Mark Muir, he gave an example of a case where decertification action was not taken in a timely manner. Chief Muir stated that, "I wanted an update on the [REDACTED] case because I had never gotten information from POST as to the action or outcome. Wayne had provided information regarding pending actions to POST without names, and I didn't see anything on there that related to [REDACTED], so it appeared they may have not done anything. So, I sent an email on it, and he responded indicating we don't have that, we looked in the file and there was nothing there, all I see is training records and his resignation. Clay Coker began employment in December 2009 and does not have a complaint file. I still have these voicemails saved permanently in my Outlook [Chief Muir provided these voicemails if the Council would like to listen to them]. So, I responded to him sending these two voicemails and said his response was disappointing news since I had brought the matter to POST in April 2010, and I told Wayne I would bring this issue to the POST Council and sent the information to him and to Winnie Ore. Then, after reminding him with voicemails, he did get back to me and wrote me a letter trying to explain away the fact that POST did not investigate it by saying in the cover letter that I had left it up to them. Keep in mind, my cover letter cited gross misconduct and violations of people's rights. Wayne's letter said that he and his staff had to go through records from 2010 stored in boxes in his office, and after review of the package and caseload with Deb Butler, were working under direction from the Council that we should only be looking at serious cases and did not want to be human resources for local agencies. The investigation was done internally, and there was plenty there for me to fire him and he chose to resign prior to the Lauderhill meeting, and we accepted his resignation. I sent, within three

weeks of this, a full packet of the entire internal affairs investigation, a cover letter, and a copy of the pre-termination letter, so the statement that “we are not supposed to be HR” is inappropriate to this situation. The guy had already terminated and we weren’t asking for HR assistance. The letter said, although he resigned, the action was left up to our office, and if you feel this was not a good decision, let us know. They did ultimately initiate an investigation process, but not because of the information I submitted, but rather because I told him I would be taking it up to the POST Council. At the August listening session, they handed out a copy of the pending complaints, and he [REDACTED] was on it. To say they reviewed it...., the POST Council has to adopt a new process to track, record, and report back to the Council on cases, because there is no way to know what is being submitted and reviewed.”

Chief Muir also stated that, “For example, the way he handled the [REDACTED] case. He lost the file, then found it, then tried to blame the lack of action on the Council directive to not investigate issues unless they are serious. I feel that false arrest, illegal searches and the other issues I provided documentation of are serious issues. It’s all about the trust. He personally has made a better case against himself for not being the right person for the job in saying that the role of POST is to police the police. He goes on to talk about how important it is to maintain the public trust, and that is where he has totally failed. He has failed the officers, but we’re not the only customers. When they failed to handle a case dealing with public trust, and drop the ball – [REDACTED] could be out there working for another agency with his POST certificate, they are failing the citizens too.”

When I interviewed Director Ternes about lack of timeliness on decertification this case, he stated, “We were shifting offices and shifting attorneys, and I said that I own that. It didn’t come in the form of a complaint. It came in here as an issue. We did look into it. Deb Butler and I looked into it and at the time, the Council said they were not the agency that was going to take action. The issue did not appear to rise to the level of decertification. Should I have put a letter in the mail? Yes.”

I said, just to clarify, Muir said that [REDACTED] resigned before the pre-termination meeting, but that there were very serious issues presented in his information to POST. Director Ternes replied, “I agree with Chief Muir on this point, but we have 140 agencies. The standard has to be applied consistently across the state due to the federal equal protection law. This is an ongoing issue with POSTs across the country. Utah is not doing anything regarding ethics issues. I have asked the Council to create a list like the Board of Nursing, which has a specific list of issues that cross the line. I asked the Council to put together a review committee. Currently, there is no mandatory reporting, no consistency in ethics, and we can’t get groups to decide what to report and what will not be reported. With Chief Muir’s complaint, it was communication. I should have sent a letter right now under ARM. Part of the issues is mixed messages from the Council. In the face-to-face meeting in Three Forks, in 2010 or 2011, the Council voted unanimously to uphold the code of ethics. They voted to change it, but the Council philosophically voted to uphold the code of ethics. Myself and Clay, who were taking complaints, thought we had our marching orders.”

Director Ternes also stated, “our attorney at the time, Deb Butler, presented several cases to the Council on what action they wanted taken. In April 2012, we had a meeting and there were

complaints from a lot of different places. We find complaints from a lot of different places – the Council needed to review files and had quite a discussion. During the meeting, Sheriff Harbaugh commented that he had an aversion to reporting ethics issues. We were talking about the fact that people were allowed to resign without certification action, and that POST is the gatekeeper on certification. Agencies are afraid to say anything about people, and may even give a good reference if they are trying to get rid of someone. When this came up, it created a lot of questions. If you don't want us to review ethics issues, then what do you want me to do? Arizona and Utah just look at legal violations, and Utah has a requirement for mandatory reporting of any legal violations including a ticket or arrest. For example, with Lake County, The Attorney General's Office / Dept. of Justice looked into the issues and referred it back to the Lake County Attorney who chose not to pursue criminal charges. I understand why they don't want to go after a Fish and Game problem, but from an ethics standpoint, an administrative review is different from prosecution, especially if it is a person in a position with a high level of public trust. So, we put [REDACTED] on the list to be reviewed by our process.

I asked Director Ternes, why is [REDACTED] on the list now if you and Deb Butler decided there was nothing to look into? Director Ternes replied, "Deb Butler and I looked at it and decided there was nothing the Council would act on. However, we put it on the list because Mr. Muir was adamant that it be checked on. It is in progress now, but even the ones that have been going on for a long time won't happen until after the first of the year. There has been a big difference in attorneys who have assisted POST. When I first came into the job, Deb Butler was the assistant Attorney General assigned to the Academy, and one of her duties was to assist POST, and she had her way of doing it when a complaint came in. Deb left and Bob McCarthy said he would do it. He took some files and disappeared, and hasn't been to a Council meeting for several months. So, I went to Agency Legal Services and the first attorney we got was Clyde Peterson. He did some work, and while I assumed he was doing work, he resigned and we were assigned Sarah Hart and she dove in with both feet."

In my interview with Undersheriff Perry Johnson (Attachment BB), he stated that, "I have never called DCI and had them say they won't get involved. They are independent of me. The subject of the investigation would be in my office and would be forced to make a compelled statement [during the administrative review], and there is no disclosure between an administrative query and the criminal investigation. DCI can talk to the same guy, and he can provide disclosure or invoke his rights. They have to find the information someplace else. The big thing is the stuff I don't know about. It is stuff that lives in the files at POST that we don't know about relative to me, my Sheriff, my officers and I don't know what traction they've given to those who make accusations. I asked Undersheriff Johnson, "Has any reason been given as to why they did not get back to you? Undersheriff Johnson replied, "No. Nothing. It is a vacuum. No one is saying, 'we can't talk to you for this reason.' They are not calling at all, so if they are looking into an issue, how can they do it. The allegation procedure says they protect citizens from misconduct by public safety officers, and they protect public safety officers who conduct themselves appropriately. I have a coroner in civil court. How did they protect him? That case took a district court judge to look at it and determine an outcome. What concerns me is that the tail wags the dog. I understand this happens from time to time, but in regard to a quasi-judicial board, and having a staff that says, you can't look in here, you can't see how I'm doing, because you have to make a decision."

In my interview with Clay Coker, I asked him, what do you know about the concern regarding the lack of notification to the administrators about complaints? Mr. Coker responded, “I can’t get in Wayne Ternes’ head. I wrote letters for him, drafts for his signature, and I don’t think they happened. I wasn’t going to step over my bounds and send things out, but there are things that should have gone out.” I asked Mr. Coker to provide an example. Mr. Coker responded, “I like getting stuff done in a timely manner. We need to send things out, but I think he may have been balking because he didn’t have direction, and decided not to, or was looking for direction. I send out a letter to the accused, and copy this letter to the employing authority. Now, it is working. Before, I think it was a communication issue. When I got this [acting] job, I recreated forms, defined processes. I created a form for agencies to certify compliance with a notarized signature, the forms are now there, and answers to questions are there.”

Issue 6: Unsubstantiated allegations & mitigating issues (there are a few significant allegations I was unable to substantiate that are cited in this section with the intent of providing closure on these issues).

Unsubstantiated allegations

There was one significant concern articulated by numerous review participants – that POST Council staff had potentially used the Garrity Warning or had compelled statements from law enforcement officers under penalty of losing their certifications. I was unable to find any factual evidence that substantiates that Garrity or compelled statements were used by Ternes or Coker.

When I interviewed Wayne Ternes on this matter, I asked, did the issue of compelled statements or Garrity come up in this discussion [with James Raymond and Doug Chase]? Mr. Ternes replied, “I remember talking to them about it. This whole state has gone into a frenzy on compelled statements. The advice I’ve been given by the Association of POST Directors is that the POST Council has the authority to require compelled statements. We’ve never used that authority, it was just a suggestion and discussion. What happened is you have a bona fide agency, Fish, Wildlife, and Parks trying to conduct an investigation, so in speaking to the investigator from FWP, I told him to let them [the officers who weren’t cooperating] know that if they refused to participate, you would turn that information over to us for consideration. To this day, we have never taken action against these people for failure to participate.”

When I interviewed Clay Coker on this matter, he said, “one of the allegations MPPA had is regarding compelled statements. We’ve never done a compelled statement. We did talk about Garrity at a training session, but we have never done one. I have never taken a compelled statement from anyone.”

None of the other review participants had direct knowledge of POST staff using compelled statements or Garrity. Ternes and Coker agreed and appeared credible on this point. I did not contact the officers involved in this issue or their attorney out of concern of interfering with an ongoing review being conducted by POST in this matter [this contact information is available].

Another issue in relation to a lack of timely action on decertification was raised by Sheriff Burdick. Sheriff Burdick stated that, “with one of my situations, it took almost two years to decertify a deputy who left the country. This occurred in late 2005. One of our deputies had been involved in a Partner/Family Member Assault with his wife. She came in and there was clear evidence of the assault, then he directly left the state and went to New York. There was also an investigation from the State Department. He hosted a foreign exchange student, and they were looking into allegations of sexual contact with the foreign exchange student. After we got the warrant issued, I sent all the information to POST in hard copy [for decertification or suspension of certification purposes]. Then, at least once every month or every two months, I would leave phone messages asking the status, and I was checking the website and would see this deputy was still active. After two years, I caught Wayne Ternes face-to-face and said that he needed to deal with this situation. I said that we need to suspend this certification, and that it is taking too long. It was happenstance that I came face-to-face with him. He never returned my phone calls or emails. I told him to look at the ARM and that they can suspend him based on what information we have now pending a hearing. He did get back to me about two weeks later – I happened to run into him face-to-face again, and he said, he looked into it, and we could do that. Sometime after that I looked on the website and the certification was suspended pending a hearing. This was 2007 and we had started the process in 2005. This rings with other issues that were brought to MSPOA.” This example does not appear to relate to Director Ternes performance as he was not hired into the job of POST Executive Director until 2007.

Mitigating issues

Lack of previous corrective action

Interviews with the POST Council Legal Counsel and POST Council members indicate there has been no previous corrective action taken with Director Ternes, or any formal discussions or documentation with regard to corrective action.

- *Hart: [How about the proposal for POST to take over MLEA?]* I had absolutely no knowledge of this. One of the other POST Council members told me, then I saw an email from Wayne saying it was something Clay had discussed with someone. *[What was the Council’s response to Wayne on these issues?]* I don’t know that we got to do much of a response other than to say, whoa, wait, let’s pass on the fast track. I remember Steve Barry saying let’s wait, and Dennis McCave saying let’s hold on and look at this, and I think it was a unanimous vote not to fast track the legislation. *[Was there any type of supervisor/employee discussion?]* I don’t think there was a ‘don’t do this’ discussion, and the next meeting was the one where law enforcement was presenting their concerns. Winnie sort of excused it. I talked to Winnie and Wayne. She [Winnie] kind of gave her blessing to it. I don’t remember anything being directly articulated, and feel it was somewhat unfair to Wayne that there wasn’t a ‘no, you should never have done this.’ I get the sense there was a check-in with Winnie.
- *Harbaugh: [Has the Council taken any previous corrective action with Wayne?]* I’m not aware of any, and I’ll discuss this further. It became apparent in discussions I had with

other Council members, and it appeared to me, that any time one of Wayne Ternes' decisions were questioned, Winnie Orr intervened and told us not to micromanage, and not to ask questions. It became apparent to me and McCave that this would happen. McCave would ask questions then get admonished by Winnie. Does the Council have a basis for corrective action if the Chair does not think it should be taken?

- *Smith:* We went from one Council meeting where we were giving him pats on the back to suspending him the next Council meeting. I realize there are violations so egregious that you terminate immediately, but know that if you have a sub-standard employee out there, there has to be counseling and documentation of corrective efforts. If it were up to me, the only fault I can find is the policy and procedure manual has never been done. He should have taken the initiative to do this, but was he ever told to do it? No.

Staffing and support issues

As cited above, law enforcement administrators indicated that they understood staffing limitations are impacting the updating of training and certification records. For example, Chief Mark Muir stated that, "I have heard a lot of complaints. I can't give personal examples that I can lay at their [POST staff's] feet, but an number of members of the Chief's association did not get POST credit hours for courses they attended in 2011, but you never know how to attribute it, but some people indicated that they had signed on a line right below people who did get credit. I think a good deal of the issues with training records has to do with inadequate staffing. But, not having a process in place to coordinate and verify and deal with concerns is a problem."

Information from participants also indicates that turnover with legal support staff, and different legal approaches by this support staff appear to have impacted the efficiency of the decertification process. For example, in the interview with Clay Coker, he stated, "for example, case [REDACTED], my third case in 2010, we're going to hearing, through the MAPA process on January 24, 2013. I worked it up, there was a delay, then a delay and a delay. Deb [Butler] didn't want to take it, but the Council wanted to take it to hearing. They directed Deb in May 2011 to go to hearing, and six months later Deb came back and offered a settlement, and the Council said, no, we want it to go to hearing. With [REDACTED], my report was written in March or April 2010, and at that time, Deb said, let's wait until the outcome of the civil trial, which took a year. Then we got Sarah Hart, who is performing. Now, I draft a letter, Sarah approves it, and we get it out. In the first week I took over [as Acting Executive Director] in August, we got 20 letters out. Now, for 2010, we are all caught up except for those are going to hearing or the ones that are with the attorney; and for 2011, we are all caught up except for those are going to hearing or the ones that are with the attorney."

IV. Recommendations:

Participant Recommendations

I asked all participants to provide input on issues that could provide the Council and Executive Director Ternes guidance on where to go from here. Specifically, I asked participants to relate what they saw as strengths or opportunities with Director Ternes, and what they saw as the appropriate next steps or ideal outcomes of this review process.

I would also like to note for the record that during this review process, which included numerous emails, phone calls and lengthy interviews with Mr. Ternes, he maintained a professional, calm, and helpful demeanor at all times. Several review participants also cited these traits.

Strengths or opportunities with Director Ternes:

Olson: "He is compassionate, a joy to be around, is funny, and has a big heart."

Batista: "Before all of this, I've always known him to be a very nice person. I also hear that he is a good trainer. I don't have a lot of one-on-one interaction with him, but in hindsight, I don't know if he has the background to do this job. He worked in the food service at the Prison, then was a trainer, then got this job at POST."

Ore: "He is committed to whatever he does, sometimes to a fault – maybe he gets blinded. He works hard and has passion."

Hogan-Boggio: "He is very friendly. He is able to respond calmly to heated issues, and doesn't respond emotionally. He is good at keeping his cool and is an articulate speaker. He is even-tempered and a good public speaker."

Gootkin: "When he was at the Department of Corrections, he communicated. He worked with us, but he has not done that as POST Director. As open-minded as I am, and as much as I believe in giving people second and third chances, I don't think he can rebuild trust. I know of administrators he has allegedly lied to, and if you lie you die. If you make a mistake and take ownership, people will give you a second change."

Schaffer: "He is a gregarious, outgoing person who is easy to like. I like being around him and the exchanges we have, and I think he is a good man. I think a couple of mistakes were made. I'm not sure Wayne has the administrative background to do what POST is asking him to do. Wayne Ternes is a good trainer. There are four people in the state who can do instructor development, and Wayne took me under his wing in this area. He needs to work on the administrative function. Getting certificates, managing budgets, keeping the records up to date. The positives are, when he is given the opportunity, and is face-to-face, he is a good communicator, but getting emails out and returning phone calls is a challenge for him."

Mehn: “I don’t know if Wayne could do it, but someone in charge, the Attorney General or someone in charge of the POST Council needs to set a clear direction. I think that is where Wayne tried to start and do a task that hasn’t been done properly in the past. He [Wayne] still provides training to other agencies. He teaches self-defense and is a real advocate of officer ethics. I’m guessing he is doing this training as POST director where he is approved to do training. He hasn’t done training for a while, we held classes and an officer ethics refresher and Wayne was a real part of it. Some officers need to be slapped on the side of the head. We do refresher training in self defense and firearms, but ethics is not a mandatory refresher. Ethics – if an officer lies, they can never testify again. If they were caught lying on the job, they can never testify again because they don’t have credibility, and Wayne is a big advocate of this.”

Hart: “Wayne really does care a lot, he did everything he could to get me what I needed to do my job and to get me the background and additional information I needed. He also has an institutional knowledge that is valuable. For example, in [REDACTED] and [REDACTED], he explained why Chester was so pissed and the history of the case.”

Betz: “I think that Wayne is trying to do the right thing, but that it was presented poorly or people took it poorly. I think he will continue to do the right thing or what he perceives to be the right thing. We need to set up a way to ensure communication is improved and that there is no further communication breakdowns. I also know they are short-staffed.”

Appropriate next steps or ideal outcomes of this review process

I also asked participants to relate their opinions on the appropriate next steps or ideal outcomes of this review process:

Olson: “With the Council itself, I have the utmost respect. Individuals like Steve Barry, Hal Harper, John Schafer, etc. There is no issue between the academy and the Council. The issue is between the academy and the POST staff. There is a severe lack of trust. At the end of the meeting, I shook Clay’s hand and said, “I wish you the best.” He pulled me in close and said into my ear, “not all things are as they seem to be.” The email [regarding the proposed legislation] was from Clay’s email account, but there was always a suspicion that it was Wayne’s idea. I don’t believe Clay would distribute proposed legislation without Wayne knowing about it. I will never be able to trust Wayne Ternes again. I’ve seen his position on issues change on a regular basis, and it appears he either he doesn’t know and is winging it on a response, or that he is not being truthful. [*What if we were to have a “clearing of the air” with Wayne?*] If there was a clearing of the air with Wayne, I would still be on guard and would reduce my communication with him to writing. In the bigger scheme, Wayne doesn’t have to have a relationship with the MLEA, and I would be more concerned with the POST staff’s relationships with the stakeholders than with the MLEA. Howard Webb refused to go to POST Council meetings because he felt he didn’t need to listen to them. You can agree to disagree, but it seems like Wayne doesn’t get it. Wayne once said to me that Doug Chase is

incompetent. Just because you disagree with or don't like someone, it doesn't make it ok to make those types of statements."

Batista: "With Wayne at the helm? I don't think he's the guy for the job. I would love to say otherwise, but don't think he has enough management experience. He doesn't understand the sensitivity of this profession and how you go about collecting information. If there was a different structure in place, if you had a seasoned manager he reported to, maybe, but one thing about this profession is that cops don't forgive and forget. It would be hard for him to have credibility or trust. Someone like Craig Palmer would have been good in the job, but he couldn't work for those wages. They need a director with more management experience and insight into this business. They need to establish trust and working relationships with administrators in law enforcement and corrections. They also need to look at the governance structure. Don't take this the wrong way, but I understand why someone would draft a bill to put MLEA under POST. It would not have worked with the current staff, but if it were the other way around (i.e., POST under MLEA, or the entire structure under Kevin Olson's leadership) it would work. They could have POST temporarily report to Kevin Olson until they can work on the governance structure."

Ore: "He [Ternes] can't come back. I care about Wayne as a human being, but I care about the Council even more. I am concerned about his health - he has gone through a lot of grief and loss. However, he can't come back to this job because he has no credibility. I have not spoken to Wayne since the night of the meeting. Steve Barry told me that if Wayne contacts me that I need to tell him he needs to talk to Steve. I pinged him a couple of weeks ago and asked if he is ok - I was concerned about him. His wife and kids have not heard from him. His family and friends do not know where he is. He can't go back to that job, and I would also question Clay's ability to do the job as investigator because the field has no trust in staff.

[What do you see as the ideal outcome of this fact-finding and evaluation process?] If anything, the Council and I dropped the ball by empowering without follow-up, without checking. The other thing we missed, myself and everyone on the hiring committee, is that Wayne is an excellent trainer, but has no management skills. Did we do anything to evaluate those skills? No. I didn't even look at the interview questions based on the assumption that Human Resources would have put together an appropriate screening tool. If I could go back, would I ensure we got training around these skills to ensure he would be effective? Yes.

[Do you think it would work if POST hired an Executive Director and kept Wayne on as a trainer?] "It is an interesting question, but it comes back to credibility. If you've lost credibility, you can't train. They [law enforcement] are a pack of gossips, and feed off of each other because they need camaraderie. Kevin [Olson] has done an amazing job with scarce resources bringing MLEA up to a high standard. I am concerned that POST is so bad, I may have lost my credibility to do training, and I met with Kevin regarding this. Also, Wayne's strength is not in curriculum writing, which is where they need the expertise. POST should come out of Justice. It is a better fit for the Department of Labor and Industry. I wish Wayne would just come home and resign and say that he can't be effective in this job and should step down."

Muir: "They need to do a housecleaning, and they aren't going to get there with Wayne Ternes as director. He doesn't have the leadership skills. He may have his heart in the right place, but

doesn't have the skills to back it up. Also, if he is dishonest, if he lied to the POST Council about POST being overlooked in the EPP by the Department of Justice and blaming them, then he can't be in the job. We can't have someone policing the police if they are liars themselves."

Burdick: "Wayne Ternes has so damaged trust, and the performance issues have went before the whole state, so I don't think Wayne Ternes will be an asset to the POST Council or be trusted from this point forward. For me personally, there would be no effectiveness if Wayne Ternes is still allowed to be the POST Director." *[What do you see as the ideal outcomes of this process?]* "So far, the steps taken since the face-to-face meeting are a huge leap forward in the right direction. I understand there is a new interim chair that Wayne Ternes is on administrative leave, that Clay Coker is the acting director. Just based on the POST Council decisions since August 14th, it is clear that they know there is an issue, and I trust them to do the right thing."

Williams: "I feel both Wayne and Clay should be removed and they should start over. The director should have law enforcement experience – a minimum of ten years, and training experience. Wayne had the training experience. They need to start over with a Chair that will run the Council in a professional manner. I think some past meetings were unprofessional. They need to get the investigator position back into the role of compliance officer. The situation in Lake County was a mess, but the issues did not come to light before this. The Compliance Officer should ensure agencies are doing what they are supposed to do, certify training, provide training, focus on ensuring the database is up to date. If you provide a training roster, and there months later, the database is still not updated, it is a problem. Fulfilling these roles is what I think was the intent of the legislation."

Smith: "If trust is broken with MACOP and MPPA, so what? We don't work for MACOP and MPPA, we work for the citizens of Montana. My opinion on the ideal outcomes depends on what your findings are. There may be other things I am unaware of."

Hogan-Boggio: *[What do you feel could be done to rebuild credibility?]* "That is a hard one because I think what really needs to happen is a more clearly outlined process, and clear policies and strategies. I don't know what can be done because so much of our reality is perception, and a lot of law enforcement perceives him as a liar, and I don't know how you come back from that. I don't know what you do when someone perceives you are a liar." *[What do you see as ideal outcomes of this review, or the appropriate next steps?]* "I guess the next steps have to be rebuilding trust with law enforcement. We do have to have cooperation from law enforcement because a lot of it is self-reporting and we don't have the staff to investigate complaints without their assistance. The ideal outcome is to figure out the next steps necessary for rebuilding trust, and then the next step, is I'm a procedure person, to get procedures and policies in place. We need to revisit the website, ensure there are clear written policies and procedures, and ensure there are established timelines. This needs to be clearer so if people contact POST it is clear what the public should expect and what officers should expect. Have those written down. This needs to be the level of management in place. I don't feel people distrust the POST Council as much as they distrust Wayne. I don't know how to re-establish credibility for Wayne because there are folks who think he is a liar. Regardless of not

answering phones – we can fix this – we can line out expectations and figure out a plan, such as ensuring travel is staggered so someone can always answer the phone, but who cares about being available if no one wants to talk to you? How do you rebuild the core if people do not trust you?”

Johnson: [*What strengths or positives do you see with Director Ternes?*] “I just haven’t seen anything. I can’t weigh negatively or positively, except what appears to be a mission with Lake County and I don’t want to be involved in something like this and don’t need to be, I’ve got enough issues. I listened to Roger Nasset the police chief, who said to Wayne, ‘you testified to this and it wasn’t true, you misrepresented this.’ I am alarmed when I see a guy like that coming forward with this type of issue. I think the board has great intentions and have been excluded from information that would help them make good decisions. Trust is broken. This isn’t a crisis of confidence, this is broken, and there are staff that not only do not have the trust of local law enforcement, and I don’t think they [staff] even have the trust of the Council. What are you going to do now? How will you recover from this because you are not able to do it here?”

McCave: “We need to purge staff. Tana might be salvageable, I don’t know if she has caused any of the performance problems around the state. But Wayne and Clay need to go. If you don’t replace Clay, you need to have a supervisor with a stick and a backbone to monitor him. My perception from last month, I was in awe of the presence that there was from Sheriffs and Police Chiefs from around the state who took days from their schedules to express their frustration, and it was done for me there. There isn’t going to be a regaining of trust with these two, so purge them and start over. Do we continue to run a dysfunctional organization because someone wants to keep their job? You can find another spot for them, but keeping them in the POST Council will be detrimental to our mission.”

Gootkin: “They’ve already taken two huge steps, putting Wayne on administrative leave and doing this investigation. This means that they listened, and that is huge to sheriffs. With that being said, many people are hearing the same thing, and Wayne Ternes is the common denominator. They have to follow through on the information we give them and impose accountability. As an administrator, I deal with hundreds of employees and hiring and firing. If there were this type of behavior with one of my employees, they would be gone. You can’t do this in our business.”

Nasset: “If I were doing this review internally, I would cite that relationships are damaged beyond repair and that trust will never be there.”

Coker: “Life is better now than in the three years I’ve been here. The EPP stuff is ok, it’s in. Eileen showed me how to read the state system, and trained Tana about Excel budget spreadsheets. We have cleaned up our records from 7,000 names down to about 4,000 names. The volume is the same as it was five years ago, but there is now only one person doing it... Many of the complaints were unfounded – compelled statements, the legislation. The lack of trust issue is big, but is trust required? In the investigatory realm, there will be an adversarial relationship unless the agency is involved. I have no problem throwing it back to the agency if they are going to maintain a paper trail and do the right thing. The anomaly is bad

conduct that is condoned by the agency, and we need to protect the public in these situations. We need a common ground, a professional standard, and a list of issues that should be reported. Also, the more proficient agencies could mentor the smaller or less proficient agencies. Communication and mentoring those who are weak. There has been fence-mending done in the last seven weeks, just with getting the letters out, maintaining and sending copies, and communicating.”

Meuer: [What has been the biggest deficiency in operations since Wayne left?] “I don’t know. Other than there are only two people holding down the fort. Clay has been in these types of positions before, so he can pick it up, but he has another position too. Clay Coker seems to be doing a good job and has a comfort zone. We had a budget document come out, and it was a good education. It’s a bum deal, the whole situation, but if there are major issues, hopefully he [Wayne] resolves it and he can come back. I think we’re a pretty good team.”
[What do you see as the ideal outcomes or the appropriate next steps for this review?] “I think that the trust issue is the biggest concern, so communication is the biggest issue. The flow chart was huge in improving communications, and this was guidance from the Council. Part of the problem has been a lack of guidance, and with more of that, maybe we wouldn’t have had these issues. I don’t think that Wayne stepped outside policy or rule and did a pretty good job, and I think we’ve done a pretty good job keeping things afloat while he was gone. What we’ve been doing in his absence can guide how things will run in the future.”

Hart: “I will agree that Wayne Ternes made the two mistakes that we talked about – [REDACTED] and the LJIC in April- but other than that, the main thing is that he is a correctional officer and there is a great divide between correctional officers and cops. They don’t like each other. At first, when I heard this, I would scoff, but after the meeting in August, it seemed odd. Why are they bringing up a complaint about him testifying in a court case years after it happened? The hard part for me, listening to the part I was sitting in on, it was like in a prison. There doesn’t need to be trust between inmates and guards, and of course the inmates will grieve the actions of the guards. I think Wayne Ternes needs a slap on the wrist and think he was starting to get lax and POST was starting to get lax with policies and procedures, but I think the big thing is local agencies don’t like being regulated. I think they don’t like it at all, and are taking it out on Wayne.”

[What do you see as the ideal outcomes or appropriate next steps?] “I’m not sure you can solve all of this. The best case scenario is to get policies in place. Wayne Ternes is taking the fall for not having enough guidance. If you give someone enough rope, they will hang themselves, so there needs to be instruction, policies, and ARMs. I do think he deserves some sanctions for the two things [REDACTED] and proposing legislation to the Law and Justice Committee] because they were inappropriate. But I also think they were human mistakes that are understandable.”

Betz: [How about your interaction with POST staff? How have things been going the last eight weeks?] “I think they are doing just fine. Clay has gotten some things closed and moved forward. I will give them kudos – they were short staffed before, and are now ever shorter-staffed now. Georgette is now the policy chair. Clay came up with policies and it was handed off to Georgette and she is going to work with the policy committee to get it done. The release of information policy was spoken of. We also talked about the allegation screening committee.

I think they're moving forward, but it is slow. It takes time to get things done by committee. The agencies do the investigation and it is their house. If POST needs more information to take it to the Council, they should be able to ask for more information before they take it to a review committee. It is the agencies' responsibility to do their own investigation and POST should fall on a role of support for those agencies and their investigation, and trust in the fact that they are doing them. If the investigation is complete, it is complete, and we move forward. I think we police our own very well and we will continue to do so and we will continue to improve. 'We' meaning all agencies within the State of Montana." [*What are your thoughts on POST getting criminal justice agency status and the investigator getting peace officer status?*] "There has been discussion of it, but we need to tread lightly on what types of powers are invested in POST, and any powers need to be well-defined and well-vetted by the stakeholder. You can't come into a Chief's yard and expect to run your own investigation. Ultimately, it is up to the agency. A chief will do his investigation as best as he can, and I can see where people would take offense [to POST coming in and doing an investigation]."

Additional recommendations resulting from this review

The review also yielded additional recommendations for addressing the issues and concerns illustrated in this report. These suggestions are summarized below:

- Ensure any future presentations (e.g. presentations to legislative committees, associations, the media or the public) are thoroughly considered and vetted before delivery. This should include ensuring the presentation of all facts when relating information, and avoiding rhetoric or hyperbole in presentations.
- Implement a visible and significant focus (or refocus) of POST on its core missions of establishing basic and advanced qualification and training standards for employment; conducting and approving training; and providing for the certification or recertification of public safety officers and for the suspension or revocation of certification of public safety officers. This could involve removing the Executive Director from any type of investigatory role on behalf of POST, which is *not* a responsibility in the current job description (i.e., leaving this function to the Compliance Officer), and prioritizing the Compliance Officer's responsibilities for compliance functions, particularly getting all training records and the database up to date; establishing procedures and timelines; and coordinating with leadership (including a board screening subcommittee) on when and where to conduct investigations. Conduct a review, with a screening committee of all pending investigations to get direction on the appropriate disposition.
- Establish a Personnel Subcommittee of the POST Council to monitor and manage the performance of the Executive Director, and to provide the Executive Director with an additional resource for addressing staff issues. The Personnel Subcommittee would be responsible for activities such as establishing and monitoring individual performance objectives, facilitating an appropriate performance evaluation process that is tied to the agency's Long Range Operational Plan and includes a process for gathering input from the entire POST Council and agency constituents, implementing and monitoring discipline and corrective action (including performance improvement plans, which may be indicated in this

case), reviewing and approving staffing and related proposals (e.g., compensation), and reporting to the full Council on the results of their efforts. Committee members should be knowledgeable of public sector human resources administration and be able to devote sufficient attention to this critical board responsibility.

- The Council will need to clarify with Director Ternes whether there is an ongoing expectation for the Executive Director to conduct and approve training (in which case it may pose a conflict of interest for him to conduct training through a private business on a directly-related and regulated subject matter), or if it is the Council's intent to remove the responsibility for conducting and approving training from the Executive Director (and updating the position description should be updated accordingly).
- Have a frank discussion with the Executive Director about the current lack of credibility and trust statewide, and his role in damaging his credibility and trust. Based on information provided by interviewees, it appears it will be very difficult to reestablish trust or credibility. The Council and Executive Director should consider the challenges this will create for both parties, whether they feel it is wise to embark on this effort, and alternatives.
- While it appears there were several incidents that could constitute just cause for corrective action and discipline, there is no evidence that Mr. Ternes has been provided due process regarding his performance and conduct (i.e., formal notice of performance deficiencies and the opportunity to correct them). The Council will need to assess the severity of the conduct and performance issues and determine an appropriate response. The Administrative Rule of Montana 2.21.6509 FORMAL DISCIPLINARY ACTION states that (1) When formal disciplinary action is necessary, just cause, due process, and documentation, or other evidence of the facts are required, and (2) Management may determine the appropriateness of using progressive discipline on a case-by-case basis. This indicates that management is not required to follow a progressive discipline process if they feel an offense rises to the level of significant disciplinary action (e.g., demotion or termination) without having taken prior corrective action (e.g. a written warning or performance improvement plan).
- If the Council determines that the performance and conduct deficiencies necessitate the implementation of a written warning and performance improvement plan, and chooses to provide the Executive Director an opportunity for notification of his performance deficiencies and an opportunity to improve, the Council will need to appoint a subcommittee (e.g., the Personnel Subcommittee recommend above) to establish, monitor, and report on the ED's progress with regard to this performance improvement plan. The PIP should include:
 - A mutual plan for the ED to acknowledge his missteps to constituents and the Council, and to articulate his plan for rebuilding trust and relationships.
 - Specific goals associated with:
 - A process for involving local administrators or alternates immediately when a complaint is received (it appears this has already been accomplished at the August 2012 POST Council meeting and implemented by the Acting Executive Director).

- A process for providing appropriate communication to local administrators throughout the disposition of complaints.
 - Establishment and adherence to timelines for reviewing and disposition of complaints.
 - Implementing a steering or screening committee to assess and manage complaints.
 - POST should also provide specific training and guidance for Mr. Ternes on avoiding retaliation or the perception of retaliation against review participants to protect both him and the agency from any potential liabilities in this area.
 - Remove the Executive Director from direct participation in investigation activities as this is not part of the job description and there is a Compliance Officer at POST charged with these responsibilities.
- Institute a complaint screening committee to participate in and oversee the review of complaints and to make determinations on whether to pursue or investigate them (rather than leaving this determination to the investigator or executive director alone). The committee could also be used to screen in-progress complaints [Note: this recommendation was made to the Council by Director Ternes prior to this fact-finding review].
 - Develop a list of issues that the POST Council will consider (e.g. the Board of Nursing) to provide guidance for the staff and screening committee on when the Council will pursue and investigation or decertification [Note: this recommendation was made to the Council by Director Ternes prior to this fact-finding review].
 - Develop a performance appraisal form and appropriate process for the Executive Director position. The review also indicated that there has not been an appropriate process for evaluating the performance of the POST Executive Director. The form that Chair Ore completed was not tied to the agency's long range business plan, and the process did not include a mechanism for getting input from the entire Council on the Director's performance. In the interview with Winnie Ore, she said that, "When you don't have daily control, it is hard to be in an oversight role - when you don't really have daily oversight. I relied on Steve Barry who told me to get a hold of Jim Nys and work up a performance mechanism for the Executive Director. Wayne and I went through the PD and had the business plan and got stuff ready and talked through stuff. Before, there had been no PA's done on Wayne at all. Wayne worked with Jim Nys. My original thought was that the full council needs to weigh in, but I was resigning, so I told Wayne I would give him my thoughts. It [the performance appraisal process] wasn't what it should be by any means. I asked Ms. Ore if Director Ternes ever got any written guidance on the process for a board evaluating an Executive Director. She replied, I am not sure. When I asked Wayne Ternes about the issue, he said that, "I worked with Jim Nys. There was a lot of Jim and I not making connections, and it got toward the August meeting, and Winnie said we just needed to do one." I asked Mr. Ternes if the consultant had provided him or the Council direction on the appropriate process for getting input from the full Council. Mr. Ternes replied, we were never there yet. He never gave me direction on the appropriate process [because we weren't that far into it yet].

V. Submitted:

Jim Kerins

10/26/12
Date

VI. Attachments

Candi Mullenbach_____	Attachment A
Mullenbach & Rose Additional Documentation_____	Attachment B
Tony Harbaugh_____	Attachment C
Mark Muir_____	Attachment D
Mark Muir Additional Documentation_____	Attachment E
Roger Nasset_____	Attachment F
Roger Nasset_____	Attachment G
Wayne Ternes_____	Attachment H
Wayne Ternes_____	Attachment I
James Raymond_____	Attachment J
James Raymond_____	Attachment K
Clay Coker_____	Attachment L
Dennis McCave_____	Attachment M
Georgette Hogan-Boggio_____	Attachment N
Jim Smith_____	Attachment O
Sarah Hart_____	Attachment P
Sarah Hart Additional_____	Attachment Q
Draft Proposal for POST to Provide Oversight of MT Law Enforcement Academy_____	Attachment R
Alex Betz_____	Attachment S
John Schaffer_____	Attachment T
Mike Batista_____	Attachment U
Tana Meuer_____	Attachment V
Vern Burdick_____	Attachment W
Kevin Olson_____	Attachment X
Winnie Ore_____	Attachment Y
Winnie Ore Additional Documents_____	Attachment Z
Jerry Williams_____	Attachment AA
Perry Johnson_____	Attachment BB
Brian Gootkin_____	Attachment CC
Doug Chase_____	Attachment DD
Mike Mehn_____	Attachment EE
Elizabeth Bartholome_____	Attachment FF

POST – Public Safety Officer Standards & Training Council
Organizational and Individual Workplace Performance Fact-Finding Interviews
October 2012

Name: Candi Mullenbach 444-3158 Cmullenbach@mt.gov	Title: Division of Criminal Investigation Operations Manager	Date/Time: October 10, 2012 1:30 p.m.
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I would like to get additional information from you regarding this year's EPP budget process. Specifically, Wayne Ternes' statements at the August 16, 2012 POST Council meeting regarding the EPP process.

I have reviewed Wayne Ternes's testimony when he said POST was left out of the process, and where he said he was told by me to bring it back to the POST Council, and that is not accurate.

I met with Wayne and Kim Moore, my fiscal technician, on March 28, 2012. At that time, I gave him a report that showed POST expenses for the past three years with year-to-date totals. We also discussed EPP and I said I had an EPP form. Then, on March 29, he emailed me. He did not reference our meeting the day before, and asked me for the form, and I emailed it to him on the 29th. [email dated Thursday, March 29, 2012 11:31 from Candi Mullenbach to Wayne Ternes].

I never heard anything back, and then Eileen Rose, the CSD Budget Analyst asked where the POST information was. I let Eileen know that POST was sent the form and did not respond [email dated April 25, 2012, 3:20 PM from Candi Mullenbach to Eileen Rose]. She [Eileen] had gotten in touch in April to begin to work on the EPP request. We were working with them in March and April.

On August 19th, after the POST Council meeting, he sent an email to Kila [Shepard – DOJ Human Resources Officer] and said, "I spoke with Candi a while back and she indicated that we were left out of the process with DCI."

With regard to Wayne's testimony that "she hasn't been in there that long so she didn't understand who, what, where," that isn't accurate. I have been with the state for twelve years, and I have been through the legislative process.

Did Wayne Ternes call you in April? The call where he said you told him POST was left out of the process?

No. There was no communication like this.

When we didn't get a response, Eileen followed up.

Did you direct him to go to the August meeting to get budget information from the Council?

No. As far as the Council goes, I'm not aware of the programmatic side, only the operational and fiscal stuff. If he had gotten a hold of me, I would have referred him to Mike [Batista].

I would like you to look at the transcript at 1:24:43. Mike Anderson says, "I guess I don't understand why we don't have that document today if you knew there was a limited window why you didn't make that up and have it for us today?" Wayne Ternes says, "because I'm, confused about what you folks want. Some of you want me just to do this, and some of you are saying you want more of this (unintelligible). I didn't know, really, there really isn't a document. We have those justification sheets we do for when we do for employees, and I have those back at the office, but I..., because I've been told don't ask for anything from some of you on the side when I talk to you, we've been ok, the last session was don't go anywhere, we know we need resources, but now is not the time to do it, you know."

Is this accurate, that there is no document?

No. There is a document, and I emailed it to him on March 29, 2012

Clay worked directly with CSD and got the documented completed.

In the summer, July 25, 2011, I scheduled a meeting with Wayne Ternes in February, and when we showed up for the meeting, he wasn't there. We tried to call before going out there because the roads were bad and got no response, and when we got out there, he was not there.

Kim, who is the fiscal technician, experienced a lack of responses. Kim struggles with getting information from Wayne Ternes in a timely manner, such as procard logs. We've required that these are submitted on a weekly basis, but they continue to send information in once a month.

The other thing that makes it difficult is when Wayne Ternes stays in a hotel, he typically upgrades and puts other charges on the card, and reimburses the state through the travel expense voucher. We talked to him about the difficulties this was causing. It took 3 – 4 hours to see if Wayne was paying the right amount, and this had to go through three different checks, so we ended up spending 12 hours to reimburse him \$2.50. We told Wayne to put it on his personal card and we'll reimburse the state rate.

When did you instruct him about this?

At the March 28 meeting.

How long did that go on, and did it happen after the March 28th meeting?

It happened at least a couple of times, and it did happen after the March 28th meeting.

Mike Batista interjected that that: DCI also tried to address this through phone calls, and that Wayne Ternes would not call Kim Moore back about these issues.

Mike, how did the previous EPP process go? Should Wayne have known the process? He'd been through at least one prior session, and we did some outreach about taking care of EPP needs, so I think he was aware of the process. He presented the EPP at a committee in 2009 where they got Clay's position.

You mentioned that Wayne's travel expenses were audited three times. Was there a concern with the validity of the expenses, or is this the normal process?

No, there were no concerns. Kim does it and covers travel, then passes it to another accounting technician at CSD and they go through the other processes.

Have you observed any positives in your interaction with Wayne?

No. I guess I haven't had that much communication with him, but not because I wasn't reaching out.

I remember preparing for the March 28th meeting. They had such a small budget, I wasn't sure what we were going to talk about, so that is why I put together the sheet showing POST expenses for the past three years with year-to-date totals.

What is the normal EPP process – if he had responded, what would it have looked like?

He would have sent the EPP form. I have worksheets for each EPP request, so I put them into those forms, we get the Attorney General's approval, then we put it into MBARS. Whatever Wayne would have sent to us would have been presented through DCI to CSD who would present the EPP>

What is Kila's involvement in the process? Why would he have emailed Kila on August 19th, 2012.

I don't know. The communication originally started with Eileen. Maybe Eileen was acting for Kathy, or it may have been because of the temporary FTE.

Mullenbach, Candi

From: Mullenbach, Candi
Sent: Thursday, March 29, 2012 11:31 AM
To: Ternes, Wayne
Subject: RE: EPP form
Attachments: DOJ DCI 2015 Biennial EPP Requests Blank Form.xlsx

Here you go!

From: Ternes, Wayne
Sent: Thursday, March 29, 2012 11:18 AM
To: Mullenbach, Candi
Subject: RE: EPP form

Not a problem it was just a friendly reminder... ☺

Wayne C. Ternes
Executive Director
Montana Public Safety Officer Standards and Training Council
2280 Sierra Road East
Sierra, MT 59302
1.408.444.0076 office
1.408.444.0076 fax
www.mpsot.org

Courage is what it takes to stand up and speak; courage is also what it takes to sit down and listen.
-Sir Winston Churchill

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From: Mullenbach, Candi
Sent: Thursday, March 29, 2012 11:08 AM
To: Ternes, Wayne
Subject: RE: EPP form

Hi

I haven't forgotten just swamped. I will get to it here in a bit. Sorry

From: Ternes, Wayne
Sent: Thursday, March 29, 2012 10:22 AM
To: Mullenbach, Candi
Subject: EPP form

Hello Candi,

Do you have a standard blank EPP form that you could send me? Thanks in advance.....

Wayne C. Ternes

POST – Public Safety Officer Standards & Training Council
Organizational and Individual Workplace Performance Fact-Finding Interviews
September 2012

Name: Sheriff Tony Harbaugh 406-874-3320 tharbaugh@ccsomt.com	Title: Sheriff, Custer County Member, Montana Sheriff's and Peace Officers Association	Date/Time: 9/17/12; 12:00p
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Please describe how your responsibilities both as Sheriff and as POST Council member and how your roles relate to the POST Council staff.

I have worked in the Sheriff's Office for about thirty-five (35) years, and have been Sheriff since 1985. I went on the POST Council in 2007, about the same time that the transition took place to move POST out from under the Montana Board of Crime Control. On or before this, Wayne Ternes had been hired as POST Executive Director. It was around the time I came onto the Council, but I was not involved in the hiring process.

Prior to the POST appointment, I was in the Montana Sheriff's and Peace Officers Association, since 1985. As a board member there, we always had a representative on the POST Council, so the board member would give their reports on the POST Council and would gather ideas and feedback from members.

Prior to my being on the POST Council, I was familiar with the previous directors and with the mission, but not actively involved with the POST Council.

What are your observations of the pros and cons of Wayne Ternes' leadership during your tenure on the POST Council?

Wayne is a likable guy. I get along with him fine. You can't help but like him. However, about six months to one year into my appointment on the POST Council, I started to get the sense he was in over his head due to some poor decision-making.

Some of his decision-making processes were lacking, for lack of a better term. At the time, I attributed it to him not having a law enforcement background and not understanding aspects of the profession such as rules of evidence and due process. I began to feel he was struggling, and began to get phone calls from sheriffs.

One of the first incidents was a few years ago when we agreed on hiring a Compliance Officer. Then, the first thing I know, the Compliance Officer was being called an Investigator. This caused a lot of concern among sheriffs due to POST not keeping up with its key responsibilities –ensuring officer transcripts are in order, looking at hours of training to see if they get certifications, and then showing up at their door to conduct compliance reviews and investigations. There was push-back to this approach.

Then, about 2 – 3 years ago, an Associated Press article comes out where Coker and Ternes had spoken to the media about a certain certification requiring evaluation by a medical doctor to ensure an officer was fit, and that this could be a liability to agencies as defendant's attorneys could use the lack of an evaluation against the agency. There was no communication to the agencies about this issue, and it was not communicated to the POST Council. The agencies had to read about it in the Billings newspaper regarding this flaw in the system that could affect defendant's abilities to challenge a case. I know it became an issue in one jurisdiction. Tim Barkley, the Sheriff in Fallon County - it became an issue in one of their DUI cases, and the defendant's attorney was demanding to see these records. There was a lot of frustration that got channeled to me. Wayne didn't bring this to the POST Council, and had not notified local agencies. Sheriffs were asking me, isn't POST here to help us rather than create adversarial relationships in court for us?

Any other concerns?

You've probably talked to people about Lake County. This is second or third hand, but a big concern that is being repeated is that Wayne either used Garrity or threatened to use Garrity, which is a compelled statement required by an employer. Requiring a compelled statement to maintain certification.

During the listening session, one of the complainants directly asked, have you used or threatened to use Garrity, and both Wayne and Clay responded no.

I was concerned when I heard they threatened to pull POST certificates if they refused to give a statement. If this had officially come to the POST Council as a complaint, I would have wanted to know.

Other concerns relate to Wayne's ability to run the office. This has come from other law enforcement sources. Trouble getting calls returned, trying to contact the office by email and not getting any response. With only three staff people, I have gotten complaints that all three of them are going to conferences, and no one stays behind to man the office. POST staff needs to work diligently to have someone answer the phone and to get back to people. People have called, left messages, continued to call, and gotten no response.

I don't have any personal examples of this, they have come to me as a Council member. I have Wayne's personal cell phone number and call him directly when I have had issues and had luck getting a hold of him.

I remember one person who had major concerns with this is Captain Tim Shanks of the Great Falls Police Department.

Any examples of the Council not being informed of major issues?

The ex parte stuff is difficult. It is frustrating as an administrator to know that we are supposed to be making decisions without knowing the details. We are being presented

with the case number and the agency, but to not have any information has been extremely difficult. However, I don't blame this on Wayne.

Do you have any examples, other than the ex parte issues, of the Council not being informed?

Following the April meeting of the Legislative Law and Justice subcommittee, I received a call from Dennis McCave asking if he had missed a meeting where we had agreed to make a justice agency out of POST and make a peace officer out of the investigator. I was shocked and was taken aback. Something that significant needs to be taken before the Council and has created a mess. Now there is a Senator who thinks that crime runs rampant in local law enforcement agencies and that POST needs more authority.

Then, there was the proposed legislation that POST take over MLEA, and that was a new one to me. This was a poor decision process. The Council should hear about these types of proposals before anyone else does.

These should have been vetted by the Council, and to go off and do it without checking with the Council is inappropriate. On the POST Council, we have to be made aware before these things go out. If one of my officers put me in this situation, they would have been called out on the carpet the first time, and the second time would be their last.

At the August meeting, there is a process to go through the Department of Justice for budget requests, and Steve asked why we weren't getting anything, and Wayne's answer to Steve was that DOJ said we're not getting anything. I personally had a conversation with Mike Batista and Mike said they had sent forms to Wayne Ternes and didn't get anything back. So, the initial deadline had gone by and this was nothing more than a blatant oversight and disregard of the budget process. I saw the reaction on Steve Barry's face. This would have been on the 16th during the actual Council meeting. I may have a sheet with the response on it, but can't find it. You will want to pose this question to Steve Barry – did this piece of the budget process get ignored.

Another example is in mid-April, I got an email from Ternes saying that POST had excess funding left over and wanted to give \$2,500 to the Sheriff's association to pay for a training. Every time we are at a Council meeting, I hear about how they need more help and about why they don't have the database up to date. I went to a Sheriff's Office meeting in May and found out that the other two associations had gotten this email too. So, I emailed Wayne Ternes and said, wouldn't it make more sense to redirect this money toward hiring help? If you are going to allocate money, let's go back to our priorities – getting some office help, if there were a legislative proposal for that, I'd support it.

Has the Council taken any previous corrective action with Wayne?

I'm not aware of any, and I'll discuss this further. It became apparent in discussions I had with other Council members, and it appeared to me, that any time one of Wayne Ternes' decisions were questioned, Winnie Orr intervened and told us not to micromanage, and not to ask questions. It became apparent to me and McCave that this would happen. McCave would ask questions then get admonished by Winnie. Does the Council have a basis for corrective action if the Chair does not think it should be taken?

At the end of the meeting, Winnie resigned – at the end of the meeting before we went into executive session. When we went into executive session, it got heated, and Winnie Ore said that she didn't see it [Wayne's performance problems] and that no one reported it. Dennis McCave took issue with that statement because the Council had tried to bring it up and were admonished. It was a common thread, always Winnie Ore intervening for Wayne. Individual Council members have said it needs to be fixed or changed.

Trust is broken and cannot be fixed if Wayne remains as Director. It pains me to say it, but based on what I've heard from law enforcement around the state, there is too much damage done. I'm not sure how it works, but do know that if Wayne comes back, we will not have the trust and support of the sheriff's offices.

Any attempts to correct him [Wayne] have been pooh-poohed away and this has limited our ability to take further corrective action.

How about with Clay Coker? Can trust be rebuilt?

I have a trust issue with him. I recognize he could defend himself by saying that things he has done were directed by Wayne. I was not in favor of making him acting director while this was in the works, but there was enough argument by other Council members that maybe he was directed by Wayne Ternes to do what he has done.

Do you have any other folks you think I should talk to as part of this process?

Steve Barry regarding the budget issue.

I got a call from the Sheriff in Roosevelt County – Freedom Crawford. He is the Sheriff, and got into a little scrape in Lewistown – threw a guy through a bar window. The Sheriff pleaded guilty to misdemeanor assault and took his lumps. He called me the other day and said, they want to take my certificates, what should I do? I told him I would have to recuse myself from his case and could not really discuss it, but had one question. Does the POST Council have any authority over elected Sheriffs? This Sheriff has been offered a deal, and they will take his certificates as part of the deal. A deputy, a policy officer and a policy chief cannot be a convicted felon, but can an elected official? I also asked, didn't someone have to complain to the POST Council to get them to open a file. He said, I know who that was, my ex-wife.

At the August meeting of the POST Council, Wayne said they'd had a complaint against me. I told him I knew it would be coming. There is a local guy who is not getting satisfaction and did not like my response, so is going over my head to POST. However,

Attachment C

the issue with the Sheriff in Wolf Point baffled me and other sheriffs. The question still remains, does the POST Council have any authority over elected sheriffs? Are sheriffs facing the threat of additional sanctions. It is, to the people I represent, a big question. I was sheriff for 15 years and never had a basic certificate. One day my secretary was processing applications for certificates and asked why I didn't have my basic certificate. I determined that a POST certification has no validity to the position of sheriff, so hadn't gotten one, but she went ahead and submitted an application for me.

Is there anyone else you think I should talk to?

Dennis McCave. He probably keeps better track of things – better than I do.

POST – Public Safety Officer Standards & Training Council
Organizational and Individual Workplace Performance Fact-Finding Interviews
September 2012

Name: Chief Mark Muir 552-6316 mmuir@ci.missoula.mt.us	Title: Chief, Missoula Police Department MACOP President	Date/Time: 9/12/12; 9:50a
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Please provide additional detail regarding the concerns raised in your letter and during the August listening session.

One of the weaknesses of the listening session turned out to be the former Chair's insistence that there were topics not open for discussion because they were ongoing cases. There was no discussion of the POST Council staff's conduct in Lake County, and this is one area that needs to be looked at. There is very little information on the record with respect to the manner in which the POST Council staff interjected itself.

Individuals with additional information regarding this issue include Mike Batista, DCI Administrator; Doug Chase, the former PD Chief in Polson; and Jim Raymond, the Polson County Attorney; Ted Chester, attorney for Lake County officers.

Doug Chase is the person who first brought the issue to my attention at this retirement party [August or September 2011]. There were issues brought up in November or December 2011, and he was completely taken aback by the approach Wayne and Clay took with him and their overall approach to the issue. There were threats – if your guys won't talk to us, we'll pull their certificates. The approach was not called for given the fact that the cases were reviewed by the prosecutor and it was determined that there was not enough information or evidence to further question those involved.

By early spring, we rolled into the first meetings of the year at the POST Council, then all of a sudden Shockley was subpoenaing people for a Law and Justice Committee Hearing.

I assume Mike Batista clued you in on how POST got pulled in to Bowen's Fish, Wildlife, and Parks investigation. There may be emails between Bowen and Ternes regarding whether POST can get involved and get these guys to talk to him.

This was the spark in the tinder box, and it escalated from there.

One of the other questionable issues was the media attention paid to the service of complaints to the officers involved, including the new Chief in Polson. He was off in Idaho fishing and got a call from his father-in-law who read in the newspaper that he was being served with a complaint from POST.

Attachment D

It is my understanding that Clay and the former chief from Troy, Mitch Walters, who now has a Process Service business, were going around trying to find these guys and it got back to the media who was being served. This is a violation of privacy rights.

The information leaking out to the media appears to have leaked from POST staff or their contract process server. The newspaper reports attributed statements to Clay Coker and Wayne Ternes. The only people who would have known [about this prior to the media release] are the POST staff or the process server, who was involved in turmoil in Troy and in the hot seat himself. I believe Mitch Walters got with Clay, who was formerly the Chief just down the road in Libby early after he was hired.

This was during the time that POST wasn't investigating a complaint I provided against one of my officers with full documentation for decertification.

Please provide the specifics on this case:

It started in early 2010, when I had an officer, [REDACTED] who was the subject of an internal investigation that lead to the discovery of gross misconduct, false reports, disclosing confidential criminal justice information to unauthorized persons, arrests without probable cause, illegal searches, allegations of accepting gratuities, and false reports to other officers and citizens.

I sent the entire investigative file to POST with a cover letter, which I read a copy of into the record at the meeting, explaining the serious misconduct, and my duty to share the materials so POST could do their work that is laid out to do. The information was sent in February 2010, and I followed up by email in April 2010. This first follow-up lead to Wayne sending me an email saying he did not have a report on the individual, but would look into it if I wanted to forward the information.

Wayne then called back five days later and said that he found the file on his desk in a pile of stuff, and that they would get on it and that Clay would look into it.

This year, at the interim committee meeting, it became clear that there were issues going on with how the Council was being given information from Wayne Ternes. Specifically, they were mislead that the Chiefs and Sheriffs were not reporting to the POST Council with enough detail and that POST needed to be a Criminal Justice agency because information is not being provided.

He mentioned a police officer who pleaded guilty to having child pornography who was allowed to resign without information being reported to POST. This related to an issue in Missoula. This is not how it went down and not an accurate reflection of the facts. He was indicted by the Federal Government after he resigned, so it was not my place at that point to bring the information to POST

So, I thought, what happened to the [REDACTED] case? So this year, I wanted an update on the [REDACTED] case because I had never gotten information from POST as to the action or outcome. Wayne had provided information regarding pending actions to

Attachment D

POST without names, and I didn't see anything on there that related to [REDACTED], so it appeared they may have not done anything. So, I sent an email on it, and he responded indicating we don't have that, we looked in the file and there was nothing there, all I see is training records and his resignation. Clay Coker began employment in December 2009 and does not have a complaint file.

I still have these voicemails saved permanently in my Outlook.

So, I responded to him sending these two voicemails and said his response was disappointing news since I had brought the matter to POST in April 2010, and I told Wayne I would bring this issue to the POST Council and sent the information to him and to Winnie Ore.

Then, after reminding him with voicemails, he did get back to me and wrote me a letter trying to explain away the fact that POST did not investigate it by saying in the cover letter that I had left it up to them. Keep in mind, my cover letter cited gross misconduct and violations of people's rights. Wayne's letter said that he and his staff had to go through records from 2010 stored in boxes in his office, and after review of the packed and caseload with [REDACTED], were working under direction from the Council that we should only be looking at serious cases and did not want to be human resources for local agencies. The investigation was done internally, and there was plenty there for me to fire him and he chose to resign prior to the Lauderhill meeting, and we accepted his resignation. I sent, within three weeks of this, a full packet of the entire internal affairs investigation, a cover letter, and a copy of the pre-termination letter, so the statement that "we are not supposed to be HR" is inappropriate to this situation. The guy had already terminated and we weren't asking for HR assistance. The letter said, although he resigned, the action was left up to our office, and if you feel this was not a good decision, let us know.

They did ultimately initiate an investigation process, but not because of the information I submitted, but rather because I told him I would be taking it up to the POST Council. At the August listening session, they handed out a copy of the pending complaints, and he [Lenahan] was on it. To say they reviewed it...., the POST Council has to adopt a new process to track, record, and report back to the Council on cases, because there is no way to know what is being submitted and reviewed.

I made a point to Steve Barry that there needs to be changes and that they should adopt a subcommittee that will review all work, not just those they take action on. Every three to six months you could change the subcommittee membership knowing that those individuals can't be involved in case decisions due to the ex parte issue.

Do you have any concerns with POST recording and tracking training?

I have heard a lot of complaints. I can't give personal examples that I can lay at their [POST staff's] feet, but a number of members of the Chief's association did not get POST credit hours for courses they attended in 2011, but you never know how to

Attachment D

attribute it, but some people indicated that they had signed on a line right below people who did get credit.

I think a good deal of the issues with training records has to do with inadequate staffing. But, not having a process in place to coordinate and verify and deal with concerns is a problem.

One thing you can talk to Kevin Olson about is that the POST Council does not answer the phone so many agencies have given up trying to call. I resort to emails and it takes a long time for them to get back.

I also attribute this problem to the fact that for a one-hour presentation to the Council of Mayors, Wayne dragged the entire staff to Bozeman and they were all out of the office the entire day for a one-hour presentation. As much as they complain about being short-staffed, this seems like a bad use of staff time. My personal history with trying to get answers from Wayne is old news. I resorted a long time ago to doing it through email, and don't try calling anymore.

Kevin Olson knows how many calls go unanswered because his staff ends up answering the phone when they are gone.

I felt there was a new dawn after the listening session [on 8/14/12]. The next meeting, the way the Council was addressing issues was to wipe the slate clean and started with new stuff.

I have a piece of paper in front of me that suggests Wayne has lied to the POST Council. Thursday, after the listening session, on the 15th, he was asked to give an update on the business plan to the Council and Wayne told them POST had been overlooked in the EPP for the upcoming biennium and weren't going to get funding for adequate staffing because POST had been overlooked by the Department of Justice.

Mike Batista may have more information, but I think this may be a lie.

Steve Barry put him on the spot as to who he talked to. He kept saying "they." He ultimately gave a name, I'd have to go back in the recording and see who it was, but she was a DCI employee. If you consult with the individual identified during the meeting with Wayne, you may find more information there. There may have been emails exchanged.

Wayne was probably the wrong choice for this position

Do you know if the compelling statements using Garrity was implemented, or was this just a proposed practice?

I understand that it is proposed. That is what they said in the listening session. Clay Coker said they had not used Garrity. However, there are [decertification] cases where

they have initiated action regarding a certification because the officer refused to talk to them. I can't tell you for positive, but can look at the cases.

The majority of certification they took action on in 2011 were for individuals who had felony convictions, which is automatic. The only one they took action against in 2011 who was not a felony conviction was one where the individual refused to accept a letter by certified mail. This was indicated as the nature of the offense on the report – the recordkeeping is lousy. The Lake County agencies said, filed, complaint pending, and I don't even see the Polson one on the list. I don't know how free any of these guys [officers on the list] are to talk to you. I know they didn't come to the listening session, but their attorney out of Polson did. Ted Chester who is a retired FBI agent and is now practicing law in Polson. His email is chesterlaw@lawbythelake.com.

Jerry Williams is the ED for MPPA. He did put Clay on the spot on the issue because it is an issue that officers are concerned about. It is bad enough that your employer can compel information from you that could result in a loss of job – with immunity from criminal proceedings – but to know have this held over your head in another fashion is concerning.

Vern Burdick said that you may have information regarding ethical issues or concerns on the part of Wayne or Clay.

I can state for the record that folks are concerned about Clay being placed in as acting director because no one is quite sure who the header of this ineptitude is, and we don't know for sure [if it was Wayne or Clay].

Ethically, I can tell you that both Wayne and Clay gave direction to an officer in Lake County – a sheriff's deputy - that suggested the officer should collect physical evidence to later be used against the sheriff in relation to the sheriff telling a school resource officer to discontinue an investigation. The Deputy had been instructed by Wayne Ternes and Clay Coker to get video that may be helpful to them.

The other ethical issue is the leaking of information to the media that we already talked about, but we will never know for sure who did this. Matt Frank [the reporter] will not reveal his sources of information.

There was also another issue where Clay was involved in writing up a piece of draft legislation moving MLEA under the POST Council. Winnie and Wayne took responsibility, but none of us believe it was a mistake, it looked like it was a shot across the bow at Kevin Olson and the Department of Justice.

Another issue is the way Wayne Ternes responded at the Law and Justice committee – it was disgraceful [stating that the officer was convicted of child pornography but was allowed to resign and was not reported to POST]. This relates to his testimony regarding the officer that resigned which we discussed before – had he said that a former police officer pleaded guilty after department suspension and resignation, it

would have been accurate, but that is not what he said. Wayne didn't mention the Missoula Police Department in particular, so I did not address this during the hearing, so I am the only person who knows this was wrong.

I was provided a copy of the slip from POST, and I filled it out as he had resigned, because he had at that time. They also need to change this form. There are limited choices we can check as the reason for termination: retire, resign, deceased, but they need to add a category of "resigned under investigation" or something so we can be more accurate. However, there was no other category for resigned, so that is the box I checked.

Additionally, both Clay Coker and Chief Jim Smith (Libby PD) are members of a motorcycle club [MT Roughnecks] which MACOP members take issue with. There are group photos in the public domain of Clay Coker wearing the club colors with a bandana hiding his face and posed holding a single action revolver across his chest. The general feeling is that LE officials have no business belonging to MC clubs that emulate outlaw motorcycle gangs in their appearance and organization.

Please describe your comment in the letter that the POST Council and staff are missing the mark regarding reserve officer and part-time officer training.

The certificates are not necessarily a personal problem with Wayne. With a couple of exceptions, I believe that Wayne Ternes, in his interaction with the Council, every time they are making progress in a direction he doesn't agree with, he stirs them up or distracts the conversation. You can listen to the recordings of meetings from last year. Whenever they would start making progress and having a serious discussion about concerns, Wayne Ternes would jump in and then start saying things like you have the authority, but don't need to take action. It is painful to listen to these meetings, and at the end of the day, they would have nothing done.

The exceptions to this were the meeting in June after the first letter regarding problems, and after the 8/14 listening session. They wiped the plate clean, got to work, and got something done.

The lack of progress on the reserve officer stuff is an example of this lack of progress. Wayne talked about liability and they took a day, and at the end, what they did was to quit offering certificates for reserve officers even though there is guidance regarding minimum training requirements – eighty-eight hours – in statute.

They quit issuing certifications. They haven't hurt me because I don't use reserves, but know a lot of the smaller agencies do, and this puts them in a predicament. Many members are disgruntled about not getting leadership from POST regarding reserves and it leaves them hanging out there.

Burdick said you may have also witnessed Clay being untruthful?

I witnessed him manipulating the truth, but not necessarily lying. At the meeting following the listening session, the following day, they asked us to leave because they

were going into executive session. The very first thing on the way out the door, Clay grabbed me and said, "not everything is how it looks." He did his best to unload as many mistakes as possible on Wayne. You may want to talk to Clay Coker, because he believes he has a side of the story that exonerates him.

Frankly, Wayne Ternes and Clay Coker are not getting the job done. We did not utter anything other than a lack of trust at the meeting – that we no longer had trust that things were moving down the right path. What we didn't come out and say, and what we really want to say was, you have two wrong people working for you.

This doesn't carry over to Tana Meuer – no relation. She's been very pleasant. I don't know if her lack of availability is a performance problem or bad direction, but why would you take her to a conference and not leave someone behind to manage the office?

Do you see any opportunities or strengths with Director Ternes?

No. I don't believe trust can ever be rebuilt. His performance has been very miserable from very early on. He has either misunderstood or misguided his role. It is a common belief among my peers and associates that he needs to go, but I wasn't about to say this in a public meeting. I have been in public meetings where people have called for my resignation, and I didn't want to do this to them at the meeting. There is no doubt, performance-wise, that there have been major problems, and you can't train people to make good decisions.

For example, the way he handled the [REDACTED] case. He lost the file, then found it, then tried to blame the lack of action on the Council directive to not investigate issues unless they are serious. I feel that false arrest, illegal searches and the other issues I provided documentation of are serious issues.

It's all about the trust. He personally has made a better case against himself for not being the right person for the job in saying that the role of POST is to police the police. He goes on to talk about how important it is to maintain the public trust, and that is where he has totally failed. He has failed the officers, but we're not the only customers. When they failed to handle a case dealing with public trust, and drop the ball – Lenahan could be out there working for another agency with his POST certificate, they are failing the citizens too.

What do you see as the ideal outcomes to this review process?

One thing to remember is that half of the folks on the board have terms that expire at the end of 2012. So, there will be a 50% turnover of the Council in January, which could be good or bad. There are a number of non-contributing members that have enabled Wayne's ability to stall things out, such as the reserve thing, and their subcommittees do not get together and meet as they should.

POST has not been productive except for the meeting at the end of May or in June – where they voted on a number of things and took action, and at the meeting after the listening session.

Attachment D

They need to do a housecleaning, and they aren't going to get there with Wayne Ternes as director. He doesn't have the leadership skills. He may have his heart in the right place, but doesn't have the skills to back it up. Also, if he is dishonest, if he lied to the POST Council about POST being overlooked in the EPP by the Department of Justice and blaming them, then he can't be in the job. We can't have someone policing the police if they are liars themselves.



**Montana Public Safety Officer Standards and Training
2260 Sierra Road East
Helena, Montana 59602**

Phone: 1.406.444.9976 Director's Office: 1.406.444.9978 Fax

Monday, June 25, 2012

Mark Muir, Chief
Missoula Police Department
435 Ryan St
Missoula, MT 59802

Council Members

Wanda Orr, Chair
Public Member

Mike Anderson
ABCC

David Hanks
MBCC

Dennis McGowan
Detention Center

Tony Harrison
Sheriff's

Jim Smith
Chief of Police

Alan Bray
State Court
Peace Officer

John Schaffer
Peace Officer

Levin Matthews
Trial Law Enforcement

Steve Bann
Corrections

Robert M. McCarthy
Public Member

Ray Murray
Public Member

Georgie Moran
County Attorney

Chief Muir,

This letter is in respond to the issues that you raised during a series of e-mails sent to me last week.

The first issue surrounding the "unreported" misconduct of former Missoula PD Officer Hunsinger was in no means meant to embarrass you or question your integrity as Police Chief or anyone else in the field. I apologize if it caused any such responses.

Allow me to explain, I was asked by the LHC Chairman Senator Shuckley to put together a short list of misconduct issues that were either not reported to our office or reported in a manner that I felt was troublesome for our office trying to conduct our statutory and ARM requirements. Senator Shuckley asked for this list so that he could drive home the issue with his committee that this Council needed the ability to receive such information without question from Agencies so that the Agencies themselves would feel comfortable and be released from liability if they did so up front. As I am sure you would have if this Council had such a requirement in place.

I simply came up with a short list of such issues that were "redacted" so as to not place blame on anyone in the State. Again I apologize if you felt it was a personal attack, it was not.

If any office would have been able to obtain the information as you described in your e-mail then we could have started the process much sooner which would have been more positive on both sides.

I do have to say on a personal note of my own that I was only apprised of the situation when I was abruptly approached by then Council member Levi Talkington on why I hadn't brought Mr. Hunsinger's issue forward. When I explained to him that I knew nothing about it, Mr. Talkington directed me to the newspaper and that was the first time it was brought to my attention.

Soon afterward I requested a resolution of the Council be passed that mandated immediate suspension of any officer in the State that was charged with a "felony" because of Mr. Hunsinger's issue and others. This resolution 00-003 (attached) still awaits action by the Council.

Mark Muir

From: Mark Muir
Sent: Wednesday, June 20, 2012 10:59 AM
To: 'Ternes, Wayne'
Cc: Coker, Clayton; 'winnieore@gmail.com'; Hart, Sarah
Subject: RE: Case status
Attachments: VoiceMessage_Ternes 4_8_2010.wav; VoiceMessage_Ternes 4_12_2010.wav

Wayne,

This is very disappointing news, particularly given the efforts I made to follow up with you after the submission. I'm attaching two voice mails from your assistant to the file I sent your office in early February 2010. I plan to bring this case forward at the August POST Council meeting as an example of why LL administrators are concerned about the performance of POST.

Thank you for looking into the question about public access to training records. Look forward to hearing what process is established to grant access to citizens not involved in litigation. Clearly, if this is indeed possible without need to obtain through discovery or subpoena then the accuracy of records maintained will be particularly critical, since there would be no opportunity to correct the record before it made it into the hands of the public. I'll be interested in hearing Ms. Hart's view on the topic. Could you also please explain the specific steps needed for attorneys to obtain the information you mentioned is routinely available to them?

One last thing of a very personal nature. I received copies of the materials you presented to the LLC meeting Senator Shockley invited you to. My impression was that you used a list of thirteen cases of allegedly unreported misconduct to support the need for change in statutes or ARMs and was very displeased to read #13 pertained to a situation here at the Missoula Police Department. This is the text verbatim:

"A police officer who pleaded guilty in Federal Court to possessing child pornography was allowed to resign. No report was made to POST."

Obviously, your description of the incident did not specifically mention the MPD, but I can recognize the allegation based on the similarity and rare type of incident involved. For the record, I have publicly stated that version is not an accurate reflection of the facts and I have since learned that the POST Council was given a copy of a term slip I signed which was apparently intended to support the facts as your office wrote them. The facts in the order presented and without context now imply that Mark Muir, a police administrator in the State of Montana, was derelict in his duties and that in doing so condoned unethical and illegal off-duty conduct by an officer. I strenuously object to such a misrepresentation and believe that ***you are ethically obligated to share the following facts to anyone whom you've previously shared that term slip:***

1. MPD Sgt. Jason Huntsinger was placed on paid administrative leave in September of 2007, when the PD learned of a federal investigation into his off-duty conduct.
2. Sgt. Huntsinger remained on paid administrative leave until June of 2008, when I took over as Chief.
3. I placed Sgt. Huntsinger on unpaid suspension on June 11th 2008, effective July 1, 2008. He filed a grievance to place that in abeyance, but was denied.
4. Upon a request to appeal he was given option of re-instatement but promised that a full IA would take place since the PDJ would not provide us any details of their investigation.
5. Sgt. Huntsinger decided to remain on unpaid leave status. I didn't investigate so as to not interfere with an ongoing federal criminal investigation.

**POST – Public Safety Officer Standards & Training Council
Organizational and Individual Workplace Performance Fact-Finding Interviews
September 2012**

Name: Roger Nasset 249-7398 rnasset@kalispell.com	Title: Chief, Kalispell City Police Northwestern Regional Director, Montana Association of Chiefs of Police	Date/Time: 9/24/12 10:30 a.m.
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Please describe your history and interaction with POST and its staff.

I started as Chief in January 2007, and shortly thereafter became the Northwestern Regional Director for the Chiefs Association. I've had intermittent contact with POST on training issues.

I can tell you that up until two to two and a half years ago, POST was a resource we relied upon to keep records on training and to keep current on the status of officers, hiring, firing, retirement.

About two or two and a half years ago, it became a more proactive role that they tried to take. Most of it, I did not see directly, but got a lot of information third-hand in my role as the Northwestern Director of the Chiefs Association.

Tell me about your experience with certification of training and decertification.

With certification, we've never had a problem, but I have heard from officers that their records were not updated as soon as they should be or at all, but everyone makes mistakes.

At the April 2012 POST meeting, in reference to decertification, my name and our department was brought up by Wayne, and a substantial amount of derogatory and incorrect information was provided to the POST Council by Wayne.

We had investigated an officer internally about him dealing with females while on duty trying to get dates for off-duty.

When I first started the investigation, I called Wayne to give him a heads up and to get direction. Wayne Ternes called Clay Coker into his office, and I told them that I was pulling the Criminal Investigation Bureau into the investigation. This was October 2011 when I spoke to Wayne Ternes and Clay Coker.

I called to get advice, and considered it notification [to them of the issue] as well. It ended up being an employment rather than a criminal issue, but never was resolved.

Wayne went on record talking to the POST Council regarding issues about departments not following up on certification issues, and goes on to belittle our department. He said

he never would have found out about it unless a good guy officer called and let him know [saying one of my officers reported it instead of me]. What he said to the POST Council was a misrepresentation of what really happened. I was confused by this. In the August 2012 meeting, he admitted I had a phone conversation with him before the investigation.

He represented to the POST Council that we weren't doing our jobs, which is inaccurate. In order to further belittle my department, he said that when he looked at the termination slip, it said the officer had resigned.

I feel this was misrepresented to benefit Wayne Ternes or Wayne Ternes' purpose of trying to expand POST staff's power.

I've spoken to Clay Coker since the last POST meeting, and Clay does not recall the phone call at all. I remember distinctly that I called Wayne Ternes and he said, wait a minute, let me get Clay in here. Clay states he does not remember the phone call at all, but in the August meeting, Wayne states that he did remember the call and apologized.

I will send you the April meeting agenda and the portion of the recording where Wayne made these statements.

This is my first hand knowledge of the things I am hearing from the other chiefs. I won't flat out say he lied, but he construed it so differently from what actually occurred.

There are a lot of things on the plate of POST that they could accomplish rather than trying to do more such as the investigation activities. I am concern with this given the current staff.

We keep a clean house, and are not afraid to have anyone look over our shoulder, but due to what Wayne Ternes said in a POST meeting, I don't have trust.

I told them what we were doing, and asked for advice. They said I was doing what I was supposed to be doing. I told them about CIB being involved. I did not call again, but they did not call me back. I called Wayne Ternes after Mark Muir let me know that Wayne Ternes had made these comments.

About two or three weeks ago, Clay told me he didn't remember the call. I've always known Wayne Ternes to have a good memory, and that is why his comments bothered me.

Describe the interaction at the August meeting

I presented in front of the Council my concerns, and as I was presenting, Wayne Ternes was making comments back. He apologized, and said my comments were refreshing his memory.

What is the basis of the perception that Wayne is trying to expand POST's power?

When we talked about what Wayne Ternes is doing, we have to remember that Clay Coker is an integral part of it. At meetings, Clay Coker has tried to dissociate himself, but the two act as one.

When Clay Coker came in as the investigator, it appeared they were trying to expand the investigator status, and were taking more out of statute than what is there, and they are not accomplishing their core functions, which are to maintain accurate records, provide training and certification, and implement a reserve officer program.

A lot of things that have been on the POST to do list haven't been accomplished, and instead of working on this, they are working on expanding the investigator's authority.

The issue around the state is that the local administrators are taking care of their own offices. We are aware of the legislation for POST to have criminal justice status and for the investigator to have peace officer status.

This came to my attention at the sheriff and peace officer's conference in July 2012. It was presented to the group, and none of us were aware of these proposals.

If they can show that they can accomplish their existing goals, and there is a need for this status, we will consider it, but there is no trust there now with the current staff.

When it came to Wayne Ternes and Clay Coker, both denied they were behind this direction, and when approached about it, they said it came from the legislature, but that is not the case. There was scuttlebutt about it coming out, and I am not sure when it was provided.

I've known Wayne Ternes for a long time and never had this issue. I know Clay Coker is now the acting director, and I know a lot of these issues came up when he came on board.

If I were doing this review internally, I would cite that relationships are damaged beyond repair and that trust will never be there.

**Follow-up Phone Interview with Roger Nasset.
Monday, October 15, 2012, 2:15 p.m.**

Chief Nasset, I just wanted to follow up on the interview summary to ensure you felt it was accurate, and to get your response to the questions posed in my email.

The interview summary is fairly accurate. I did not come across as astutely as I would like. Normally, when I provide depositions, I am more formal and careful in my choice of words, and that was not my approach to this discussion, but overall it is ok.

Do you recall the conversation where Wayne said he called you and you sighed and said that you were bound by an agreement not to take certification action?

I do not recall this conversation. I'm not saying it didn't occur, but I can tell you with 100% certainty that it did not occur in the context he presented it. It wasn't by any means the way he presented it to the POST Council.

What aspects were misrepresented?

Number one, he knew about the issue because of my prior conversation, so to say he called me out of the blue doesn't make sense, and I know that didn't occur. Secondly, I didn't sigh about it because I felt it was mishandled, because how we handled it was by following our normal process. Essentially, the officer came in to start his second day of interviews. That was when we were really going to get into the meat of the complaint. Before we sat down, his attorney asked to speak to the city representative, and said the office was willing to resign and didn't want to go through the second day of interviews.

The agreement was that the City would not take affirmative action to revoke his certification, but as part of that, we said we had notified DCI, and if we were asked, we would tell the truth.

At that time, the termination slip just says, resigned, fired, it doesn't give a category for resigned under unusual circumstances.

If a guy wants to resign, you know as an HR guy that you let him, you don't say, no, you have to keep working. We didn't make any agreement that if another prospective employer called we wouldn't tell them about it.

I felt confident that since DCI was involved, someone would ask for review of his POST certificate.

Did DCI ask for a review of his POST certificate?

I don't know. I didn't get involved in it because I said I wouldn't.

When was your original call to Wayne Ternes?

I can check the file and get to within one or two weeks. I'll see when the investigation started. We gave notice to [REDACTED] on October 24, 2011, so I guess my conversation with Wayne would have been a week within that date. I made a call right

Attachment G

to his office at POST from this number [406-758-7786]. I don't know if there are state records to see if Wayne called me back.

My issue is with the way a lot of what he said was presented to POST. When it is typed out, the tone does not come across, but I took it as very derogatory, and the way he presented my sigh was inaccurate. If I did sigh, it was over [REDACTED] conduct, not because I didn't report it and Wayne caught me as he implied to the Council. I have since received a letter from Clay Coker that they have an active investigation into him.

Also, the implication that I covered something up by checking that he resigned is inaccurate. I take offense to that part. The on the termination slip, it said, did he resign, and yes, he did resign.

Have you noticed any difference in POST operations, you mentioned you got a letter. I received a letter about this investigation, so that is goo. The letter was directly to [REDACTED], and clay cc'd me on the letter he sent to him.

How about my second question in the email, do you know if any officers from your jurisdiction called POST?

I know that one of our officers was in a school with Wayne prior to this coming up, so I assume this officer talked to Wayne. However, this officer is not an administrator or anyone who would have knowledge of the administrative investigation or background on this case.

POST – Public Safety Officer Standards & Training Council
Organizational and Individual Workplace Performance Fact-Finding Interviews
October 2012

Name: Wayne Ternes 406-431-6844 wcternes@aol.com	Title: POST Executive Director	Date/Time: 10/8/12 10:15 -2:15
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The purpose of today's meeting is to provide you with the opportunity to respond and provide your side of the story with regard to issues that were raised during the August 15th POST Council meeting, and other issues that have arisen during my fact-finding review. This meeting does not represent a Loudermill hearing, and you still have the right to respond to any of these issues in writing if you choose. After I have completed my initial data gathering, I will provide a report to the POST Council who will then meet with you to discuss the next steps.

The first issue I'd like to discuss are the concerns regarding lack of action, timeliness and/or communication regarding decertification issues.

If I don't answer the phone, and get messages, I keep a phone log. I record the message, and if I spoke with the person, I cross it off, so I do have a record of communication.

We'll also talk about the philosophical aspects of this issue. The way the system worked was horrible at best since its inception. I feel their frustration with hearings and with the process for complaints of misconduct.

There is a process, and we just got a policy in place.

How did this process and policy come about?

Clay and I looked at other complaint policies. Clay Coker wrote it up and brought it to the Council in February or April of this year when the Council adopted the current complaint process. The flow chart that was part of the policy was developed in conjunction with Sarah Hart. Sarah is a visual person, and said we needed to write it in a flowchart, and then we got it tweaked at the listening session. One thing they added was the administrator being notified of every complaint. In the past, some we filled out a form, and some we didn't. Some we didn't record because they were minor issues that weren't within POST's scope – someone was upset because they got a ticket, or upset because an officer swore, so we would point them back to their local agency.

Previously, the data entry of certification was done with a myriad of people, not just three, when it was under the Montana Board of Crime Control, so the whole POST has changed with regard to what it used to be, and it is a struggle.

The first specific example of lack of timeliness on decertification is the [REDACTED] case. Please describe your recollection of this issue.

We were shifting offices and shifting attorneys, and I said that I own that. It didn't come in the form of a complaint. It came in here as an issue. We did look into it. Deb Butler

and I looked into it and at the time, the Council said they were not the agency that was going to take action. The issue did not appear to rise to the level of decertification. Should I have put a letter in the mail? Yes.

Just to clarify, Muir said that [REDACTED] resigned before the pre-termination meeting, but that there were very serious issues presented in his information to POST.

I agree with Chief Muir on this point, but we have 140 agencies. The standard has to be applied consistently across the state due to the federal equal protection law.

This is an ongoing issue with POSTs across the country. Utah is not doing anything regarding ethics issues.

I have asked the Council to create a list like the Board of Nursing, which has a specific list of issues that cross the line. I asked the Council to put together a review committee.

Currently, there is no mandatory reporting, no consistency in ethics, and we can't get groups to decide what to report and what will not be reported. With Chief Muir's complaint, it was communication. I should have sent a letter right now under ARM.

Part of the issues is mixed messages from the Council. In the face-to-face meeting in Three Forks, in 2010 or 2011, the Council voted unanimously to uphold the code of ethics. They voted to change it, but the Council philosophically voted to uphold the code of ethics. Myself and Clay, who were taking complaints, thought we had our marching orders.

Our attorney at the time, Deb Butler, presented several cases to the Council on what action they wanted taken.

In April 2012, we had a meeting and there were complaints from a lot of different places. We find complaints from a lot of different places – the Council needed to review files and had quite a discussion. During the meeting, Sheriff Harbaugh commented that he had an aversion to reporting ethics issues. We were talking about the fact that people were allowed to resign without certification action, and that POST is the gatekeeper on certification.

Agencies are afraid to say anything about people, and may even give a good reference if they are trying to get rid of someone.

When this came up, it created a lot of questions. If you don't want us to review ethics issues, then what do you want me to do? Arizona and Utah just look at legal violations, and Utah as a requirement for mandatory reporting of any legal violations including a ticket or arrest.

For example, with Lake County, The Attorney General's Office / Dept. of Justice looked into the issues and referred it back to the Lake County Attorney who chose not to pursue criminal changes. I understand why they don't want to go after a Fish and Game

problem, but from an ethics standpoint, an administrative review is different from prosecution, especially if it is a person in a position with a high level of public trust.

So, we put [REDACTED] on the list to be reviewed by our process.

Why is he on the list now if you and Deb Butler decided there was nothing to look into? Deb Butler and I looked at it and decided there was nothing the Council would act on. However, we put it on the list because Mr. Muir was adamant that it be checked on. It is in progress now, but even the ones that have been going on for a long time won't happen until after the first of the year.

There has been a big difference in attorneys who have assisted POST. When I first came into the job, Deb Butler was the assistant Attorney General assigned to the Academy, and one of her duties was to assist POST, and she had her way of doing it when a complaint came in.

Deb left and Bob McCarthy said he would do it. He took some files and disappeared, and hasn't been to a Council meeting for several months. So, I went to Agency Legal Services and the first attorney we got was Clyde Peterson. He did some work, and while I assumed he was doing work, he resigned and we were assigned Sarah Hart and she dove in with both feet.

The other concern from Chief Muir I would like to discuss is the Huntsinger case. I wasn't allowed to respond during the meeting. I had a box of files, but the Chair just wanted it to be a listening session. Here is what happened with that one. We have a mess in Lake County, and it was in the news, so people heard about it. Shockley got involved prior to the primary when he was running for Attorney General. When you are a state employee, and are asked to appear before a legislative employee, you have an obligation to do so. In consultation with Shockley and the legislative attorney, I was told they wanted information on what POST needed to do the job, one of which was mandatory reporting, or cases where mandatory reporting would have made things different. I made no reference to Chief Muir. [REDACTED] plead guilty to child pornography, and it was in the paper. [REDACTED] asked why we weren't dealing with [REDACTED], so I got [REDACTED]'s file and termination slip, and the termination slip said, resigned. It didn't say, resigned, please call me, so he was used as one example. There were a whole list of examples to show the Council needs a system in place so staff are notified. Once we knew of the felony, I brought it to the Council. I brought the newspaper article and asked for immediate revocation and was denied. Steve Barry wanted more information than just a newspaper article. [REDACTED] came about as part of this report, and there were numerous others listed.

For example, there was a guy, a tribal officer with a state certification arrested for a sex crime. Clay did research and found out the guy was in federal prison.

Attachment H

An officer in eastern Montana, whose termination slip said, involuntary termination, failure to perform duties as assigned, and we knew he was pleading to a felony because the Assistant Attorney General, not the agency, told us.

Muir's concern is that [REDACTED] resigned from the Missoula PD prior to any charges being filed or any conviction.

Now, after the fact, the stuff he listed is the first time we got any information on [REDACTED], and I get that they are upset and embarrassed.

Another example is Sheriff Edwards in Cascade County trying to fix things from a previous administration. They had a convicted felon working in the jail. Currently, by law and rule, we have to accept what the agency certifies regarding hiring, and don't have the ability to look into their actual hiring documents.

[REDACTED] didn't plead until after he resigned, yes, but he was still their employee. Who else would have reported him? Plus, they can't say they didn't know he was under investigation.

I used this as an example to show that the Council needs authority to make rules like mandatory reporting, otherwise, you don't know.

You mentioned that Sarah jumped in with both feet. Please describe the prior legal support, please compare Sarah to Deb.

They are two different personalities. Sarah Hart is chomping at the bit and wanted to get to court as a prosecutor, whereas Deb wanted to get stipulations and settle. Our budget, hiring Chris Tweeden as an outside attorney and hiring Sarah from Agency Legal Services, our operating budget will be gone.

Deb and her connection with Winnie Ore was to get by with the least cost, so Deb worked her darndest, but tried to keep it at a lower level. Sarah's take is to read the law, and has jumped in feet first.

I wasn't just Deb, prior to that, other attorneys were assigned, and at the end of the day, it was a disservice done to POST because in the name of saving money, we were using whomever was available on loan. It was free work, so you could only use her when she was available.

Another specific example of a concern was the issue raised by Vern Burdick about a deputy who committed a PFMA. Tell me about this case.

The guy is gone. Disappeared. We have the file – some of the stuff, but not all of it, and he skipped the state. So, if law enforcement can't find him to pursue charges, we certainly can't, so I put a note in the file that the certification is suspended pending further action, but we can't come to resolution until someone can find him.

I think Burdick's concern was with the timeframe.

I can't tell you the specific times. I'd have to look at the files. There was some time in there. Burdick provided information that people are now saying we [POST] shouldn't have. Deb Butler was involved.

My understanding is he said the offense and initial submission to POST occurred in 2005, and that the suspension did not take place until 2007.

I took the job on August 17th, 2007, so I can't speak to anything that took place prior to August 20, 2007. I worked by myself until Tana was hired in February 2008.

Another specific example was Brian Gootkin's concerns regarding the deputy who stole money out of an ATM. Specifically, Sheriff Gootkin said that he notified POST, but that you later indicated that the Ennis Police Chief notified POST.

I got a call from the Ennis Police Chief. We spoke on the phone, or someone from the agency called me and asked, what are you going to do with the former Deputy from Gallatin, and I looked at the termination slip and it said, terminated involuntarily for policy violations. There was no further information provided by Gallatin, all the information was provided by the Ennis police. Again, the Council has no mandatory requirements. Ennis caught him and he did it. He was a Gallatin County employee at the time he was arrested. The listening session was a feeding frenzy, and Brian Gootkin jumped up and said, there are three from my department on the list and no one told me about them.

I talked to Brian at Jorgenson's after the meeting. I told him he said there were three on the list, and said let me tell you about it. On the first one, you and your wife and I and [REDACTED] were talking during [a break at] the Special Olympics Torch Run Kick-Off Conference, and I asked why we weren't notified about the guy who struck a female juvenile as reported in the paper. I talked to Cashell and it was on the advice of the MACO insurance. The second one was the guy in Ennis, and the third one, I said, you know it came to POST because an inmate got a part of his digit cut off when the jailer slammed the meal slot because the family came to you, and you knew we were in the process. We have no report from your agency to us.

Another specific concern came from Perry Johnson on the [REDACTED] case. The guy who stole the ammunition.

It [the problem] was communication with Perry, but the Council's MO at the time, the decision was if anything was in court, to leave it alone until he was done in court, and part of the [REDACTED] agreement was that he was going to give up his certificate, and when he came out of court, he was no longer able to be certified.

Another major concern that surfaced in my fact-finding was failure to follow ARM 23.13.703. This concern was raised by James Raymond.

I'm not sure which ones he is addressing, I would have to see the investigative files. In ARM 23.13.703, under #5, it says, following review and investigation of a complaint, the director may take any appropriate action, including but not limited to the following, so I

am not bound to do any specific thing. I thought in Lake County that we were following the rule. In fact, we met with them and Raymond wouldn't let us finish the investigation.

We went to meet with just Raymond. He is the contract City Attorney for Ronan and Polson, but he also invited Doug Chase and his assistant chief, and we sat down and talked about concerns.

Did the issue of compelled statements or Garrity come up in this discussion?

I remember talking to them about it. This whole state has gone into a frenzy on compelled statements. The advice I've been given by the Association of POST Directors is that the POST Council has the authority to require compelled statements. We've never used that authority, it was just a suggestion and discussion.

What happened is you have a bona fide agency, Fish, Wildlife, and Parks trying to conduct an investigation, so in speaking to the investigator from FWP, I told him to let them [the officers who weren't cooperating] know that if they refused to participate, you would turn that information over to us for consideration. To this day, we have never taken action against these people for failure to participate.

I've been sitting out for seven weeks with no contact. There was one call from Steve Barry to notify me that Hal Harper was appointed.

We have information in the office that the Council doesn't know of and can't know of. Clyde Petersen gave a good training in April on who the process work – ex parte, and explained it in full, but people want to know. We have so much information in the office we could tell, but we can't because it is ex parte. If you want to know this information, you can sit down at POST – if it is ok with legal. The information we have, especially out of Lake County, is the stuff movies are made of. The stuff I've been told, the stuff I've looked at in sworn statements. The former Sheriff of Lake County, Lucky Larson, told me not to stay in Lake County because it wouldn't be safe. What kind of thing is that to say to a state official? There is stuff we've been privy to and information that needs to go through the process.

There are driving politics, and I knew this day would happen. My closing statement in my interview when I got the job was, if you choose to hire me, I will do the job as written. I am not here to make friends.

A POST Director's life cycle is four to five years, and then they move on because of the nature of the business. Especially when the ARMs are written where it is the Executive Director's decision. The Council has the authority to rewrite rules.

The stuff in Lake County has been interesting. At the August 2011 meeting, Doug Chase came down – it is in the minutes. He mentions how his staff was upset with the unknown, and at that time, we had not had a complaint against his people. I don't remember the exact words he used, but he made a threat that we were going to feel what it was like.

This listening session didn't just happen. It was planned. Even Muir stated that he wasn't there for rebuttals.

Some Council members have been proactive with stuff and others haven't. The Policy Committee was created, and have not developed one policy. The Professional and Ethics Committee, who could make the list of issues we will investigate, hasn't met for several years, since [REDACTED] passed away.

There have been mixed messages for ages from the Council, such as voting to uphold the code of ethics, but as we get into issues that are ethical, not criminal, then we get a different message.

On August 1, 2008, ARM was put in place.

Are there communication issues? Absolutely.

It is like with the database and website. I have no control over it. We just got permission in past months to get access to the website. We used to have to call IT and put in a request. DOJ IT assists us, but since we are not one of their departments, we are not a high priority.

In the matter of Lake County, how did the media get the information regarding the ongoing POST investigations?

We had the press calling us, and we consider everything private until it ends up in hearing. Once it goes to the hearing officer, it is public information. So, we have all these files to work up complaints and cases, and the information is private and we can't give it up. We got a subpoena duces tecum from the Office of Public Defender, a demand for us to give them all our stuff. We got subpoenaed from OPD and talked to Deb and she said we needed to quash the subpoena, and the first one got quashed by Lake County Attorney Mitch Young. So, we got a second subpoena from OPD for any information on the folks up there. I emailed Mitch Young, I have a copy of the email – Mitch we have another subpoena for information, and there was never a motion to quash, then we got a call that we needed to answer it, and all the information went to the public defender. They now have all the information, then they use it in court, and then it all becomes public information. It never came out of our office to the newspaper, it came out of court.

Describe your response to the concerns regarding failure to answer calls and to return messages. Both Dennis McCave and Chief Muir expressed concerns that you brought all staff to the Law and Justice Committee meeting, and that you brought all your staff to a Council of Mayors meeting rather than staffing the office.

One thing about it, do they want me to be there, or do they want staff exposed and able to do their jobs? The staff can answer questions, and I will not pretend I know everything. With the Law and Justice Committee, it was my decision for them to go,

Tana Meuer and Clay Coker have information that I didn't. Tana Meuer went to the league of cities and towns. We would leave messages on the phone indicating we would be out of the office. I found out this summer about the technology thing. If Tana Meuer's phone rings over, it goes to the academy. I am told by the Academy it is a ton of calls, but no one logs them. One employee said it was no problem, and the other said it was a problem.

We have to pay for the information system, the same one the public defender is using because we can't use MATIC. Before, Clay could call DCI and they would give us the last known address. When this changed, no one ever called me, they just cut us off, so I purchased a subscription to the same company that OPD uses.

Regarding the complaints about the training records not being updated, why hasn't the database been improved to expedite this process?

I don't have my own IT staff, so we are at the mercy of DOJ IT

Can you hire your own?

Absolutely. In fact, someone from DOJ suggested we hire a person. Crown Point will do one for \$60,000, and then will charge a maintenance fee, but our annual operating budget is \$90,000. I would love to improve the database and have others enter data [e.g. through a web-based application]. However, if other people enter data, how do you know they actually went? Clay went to the Association Conference a year ago at Big Sky, and no one was at a class. When he went to the room where everyone was supposed to be, there was no one there.

We had a class that coroners had to attend, and several of the class left halfway through the second day at the lunch break.

Is maintaining training data a statutory or administrative rule requirement?

It says we set standards, but does not say we have to track it.

How about the concerns with information getting lost and needing to be submitted. John Schaffer cite a couple of examples where information sent to POST was lost, including some original transcripts.

I've told people to never send originals. I get the frustrations, and I am the director, so these issues fall on my shoulders. I have not spoken about this in public meetings, but I've had some struggles with Tana, and haven't yet done her appraisal. Also, sometimes people say they sent something when they actually haven't, or people send things to the wrong address. Some mail still goes to the Montana Board of Crime Control. We all have ownership on this and over the last year, I think we have gotten this straightened out. One time, I was at Costco, and I ran into a deputy and he asked me what was up with his certification. I had to ask his name first and told him I would need to check. We are putting in a better system to track where it is and where it goes. If it impacted someone monetarily, I will write a letter saying it was effective on a certain date, and the officer can get back pay.

Attachment H

We now have a form in place where agencies have to submit sworn statements on hiring to certify that they meet all the minimum requirements. This summer, we put it out. There were some problems in the field. For example, in Cascade County they had a convicted felon working in the jail. You also probably saw with the recent election cycle the issue of the undersheriff who didn't have a high school diploma or GED, but put he had graduated on his application.

We are working on a form that catches their current phone number and email, so we will get on the computer and email people telling them that they are ineligible and to call me if they want more information. We now do a lot of these and do them by hand.

There were also a couple of issues where POST failed to respond to some fairly significant inquiries. What was your role? The first was the letter from James Raymond that was submitted back in July or August 2011.

Who was to respond? I am not an attorney, and I left it to the Council. I'm not sure who was the attorney at the time. The letter was provided to the Council. It was discussed at the August meeting, and a lot was taken under advisement, but it was the Council's responsibility to respond.

No one ever gave direction to me to respond. The Council chair may have responded to it.

DLI has a staff to support their boards. In addition to executive officers, they have administrative support and legal staff.

I asked for a screening committee and can produce minutes where I asked for it.

There was also a request from Doug Chase for minutes of the August 2011 meeting that wasn't responded to.

I don't know where or when the request came in. I sent copies of the minutes out, and if they want them, they can get them from me or off the website.

Another issue Dennis McCave felt was never adequately followed-up on was a complainant's comment to the Council that [REDACTED] told them that you were her daddy.

The Council dealt with that forever. I have lots of friends who are officers. Her issue was dealt with by the Council who met with those people. The Governor's Office, Attorney General, City, and County have dealt with these folks and the Council was apprised of it. I don't even know how to answer this other than the Council dealt with it. How do you know why people make a comment? She is a friend, but someone would need to ask her why she made that comment.

With Dennis [McCave], I am this close... I have talked to an attorney, and Dennis is close to being defamatory and abusive and creating a hostile work environment because he is now in the role of my supervisor. I have statements from people across the state regarding Dennis trying to tear me down every chance he gets.

At the meeting before the August meeting, a conference call, Dennis McCave posed the question, Wayne didn't notify the Council he was going to the Law and Justice Committee meeting. So we got the minutes of the meeting on April 12 and we have the tape of where I say I was invited to the Law and Justice committee.

It's been that way from the very first day on the job, but I've worked for Corrections for 19 years, and Winnie worked for about that long, and I think that is just how Dennis works. He is always that way.

When the [REDACTED] thing came up, I told them I would have to recuse myself from the case because I knew her.

One of the sheriffs indicated he had sent his curriculum in for the 88 hours of reserve officer training, and he never heard back from POST.

The sequence of this questioning can make this look like tit for tat, and that is not my intent, but this was the curriculum committee, which is headed by Dennis McCave. The reserve thing is interesting. Everyone keeps blaming me, but it is a state law that it came under POST, but if I ever got a ticket from a reserve officer... We have agencies that use the reserve how the law is written, and agencies that don't, and they need to fix the law.

At the meeting held by MSPOA, [REDACTED] came and talked to the group. The problem is the law hasn't kept up with the other laws. Some are using them as part time employees, and if you are a part-time employee, you don't fall under the definition of reserve. Also, you can't have your own staff volunteer as reserve. The reserves were added under 2007, legislative bill SB273 by Jent.

The Council, at the suggestion of the curricula committee chair, McCave, discontinued certifying reserve officers.

Another major concern that seems to adversely affect trust is your testimony against a Missoula Police office. Please provide your account of these events.

This started long before I got the job. I was contracted by attorneys out of Missoula and asked to meet with him as an expert witness, so I took the information home and reviewed it. The individual involved was a friend of ours, the complainant, I know them well. I agreed to do the review and told them that they may or may not like what I come up with. The first thing I did was to talk to the Attorney General Mike McGrath on a drive to the Salish Kootenai office. I told him I was involved in a case that hasn't come to fruition and he said where is it at. I told him I was on contract through deposition, and McGrath told me to finish the contract through deposition, and then after that, it is your responsibility as POST Director.

I was there as a witness for the plaintiff and Dennis McCave was there as a witness for the defendant. [REDACTED] is the attorney in this matter and he is waiting for a call from you.

I think the driving force behind this is back to this whole case. MPPA bringing this up? If it is me or any other trainer at the academy, we would have to testify. I have not solicited to testify as an expert witness as part of my business. We have to test to standards.

If a complaint is substantiated, we protect the public, and if it is unsubstantiated, we protect the officer's reputation.

Ask Edwards in Cascade County. He had a case where he wanted to decertify, and we reviewed it over and over, and the kid did not do anything wrong as far as use of force.

The other major issue articulated is trust.

This goes back to that day I was hired. The comment I made. I am not here to make friends and I am not here for political reasons.

I would be happy to share whatever information you would like to know, but I believe the associations are concerned about information coming out of our office.

One of the objectives in the business plan was public information and communication, and one of the goals was to attend different organization and association meetings – county attorneys, law enforcement, cities and towns, mayors, etc. and to start setting up town hall meetings.

If citizens are more informed about what it takes to hire a law enforcement officer, they will better understand why budgets are the way they need to be. But they are afraid of the truth, of information going to the public about the requirements to be hired.

Now comes Jerry Williams from MPPA. He was a former police officer in Butte and worked at MLEA. His position was funded by MMIA and MACO to be proactive in addressing issues that are high risk and high liability, to do training. Areas where they are paying out claims. We were just informed this year, this last summer that MMIA has been giving bad advice. As we had been talking about the minimum standards in the 2010 audits, we found, through agency self-audits, when Clay Coker asked questions, you only know what they tell you, we had many agencies self-report they did not do the correct things required under to hire an officer MCA 7-32-303 Peace Officer Status and Training, subsection 2, is a list of things required for hiring, and in 2007, it was amended to include anything else the Council decides. Subsection 7 refers back to subsection 2 and says if an officer doesn't meet the requirements in section 2, they forfeit their ability to do their job.

This comes back to the Broadwater County guy without the GED. If you don't meet the requirements, you don't have the authority to do the job.

Training at the Council in April, Bill Flink, the same day as Clyde Petersen's training, talked about how POST is seen at a national level. Bill got done with his presentation

Attachment H

and at the end of the presentation, I said, I heard this is being said across the state, and I am concerned. I started using harsher language to get the statutory changes.

MMIA were telling folks in the field that if you have someone who doesn't meet the requirements, don't go backwards on them, we'll deal with them on a case-by-case basis going forward.

One of MMIA's outs is if an agency unwillingly or knowingly hires someone who doesn't meet the requirements, they are not covered.

It came from Anaconda – an administrator told me that MMIA had given them this advice. People told me MMIA told them not to worry about existing officers and that they wanted to do them on a case-by-case basis.

With regard to mental fitness, the law says a licensed physician must certify that an individual is mentally and physically capable to do the job. The law hasn't been amended since 1985. Big agencies such as Bozeman Police Department hire an out-of-state psychologist to test their officers. An attorney in southeast Montana is challenging the use of a psychologist since the law says it needs to be a licensed physician.

What if they don't do it [an assessment] at all? Many agencies have self-reported that they don't have it.

I was on the Anaconda County Commission. A police officer who was running for sheriff stole some evidence, money, and pleads guilty in court. [REDACTED]. Ben Everett of the Dahood law office claimed that poor [REDACTED] didn't know right from wrong due to PTSD from things he's seen on the job. Upon file review, they found there was never a psychological evaluation done, so they went into settlement, and ended up paying out a large settlement.

This is an example of what I believe is MMIA telling folks in the field, which contradicts what I am saying.

I told Jerry, who was an employee at the academy at the time and who supported MMIA that MMIA was giving bad advice. I don't know if it was [REDACTED], but if you look at the statute, you don't have authority to do the job if you don't meet the requirements.

I brought it up in Billings at an attorney's meeting, and said that the liability for cities is enormous. An attorney that was there said, Montana has a citizen's arrest law, so I think we are covered. I asked, when is the last time a citizen's arrest worked when someone was in a police car and carrying a gun?

I believe this is part of the driving force behind this thing, going back to constructive termination.

Clay wrote that in a conversation with Chief Bill Dove several months ago, Dove was upset about the requirement for annual training that the Council voted on. Bill Dove said, you guys need to remember what we did with Howard. He was referring to when the association directors got mad at [REDACTED], meet with the Attorney General Mike McGrath, and shortly thereafter [REDACTED] was terminated.

Also, as I mentioned before, on August 2011, Doug Chase said, you guys will see what it is like.

Law enforcement in Montana received a lot of political pressure.

I am also concerned that the executive session at the August 2012 meeting wasn't done legally. At the August meeting, they had an executive session meeting. There are strict laws in Montana and I understand this meeting wasn't recorded. I understand you can have an executive session to deliberate details and confidential information, but the decision must be made in public. Chris Tweeten was present at the meeting as far as I knew. I have not spoken to him at all since the meeting. I don't believe the laws were followed and that you need to review this.

Also, not every council member was notified. To this day, Alex Betts has not talked to anyone from the Council.

The office, we have things to work on with the Council, but the whole Council does not know what is going on. I received a call from Mike Anderson earlier this spring on my cell phone and he wanted to talk about Lake County and said, are you sure this is a hill we want to die on? It seemed like the timing was right to work on personal political agendas.

Please describe your perspective on you presenting legislation to the Law and Justice Committee.

There was no proposed legislation. There were two questions I was asked to address, are we able to do our job now, and what will it take to fix it. It would take legal changes to fix it. That wasn't proposed legislation when you have two questions asked of you. It wasn't on behalf of the Council, it was asked of me as the director.

How about the proposed legislation for POST to take over MLEA?

That was a conversation between Clay and Alex Betts, and then Alex took it to his Colonel and it went out. I talked to Clay and reprimanded him for that. It was blown up just to use, and I will stand behind constructive termination.

When I interviewed Clay, his recollection was that you were out of town, and there was a disagreement between MLEA and the MHP about the MPAT test, and so you asked Clay to send the draft to Alex as one possible solution to the issue.

This took place while I was gone from the office. I was only notified by phone that it took place after Clay had already given Alex the document on his own. I didn't have any part of this. I did not tell Clay to send it to Alex. I did not ask him to send it to Alex. I

was notified that he gave it to Alex after the fact. After I returned to the office after the incident, I directed Clay to not give out anything unless it comes across my desk.

Clay gave the document to Council member Alex Betz in Clay's office. It was only meant to be communication between Clay and Alex.

Please tell me about the performance appraisal for you. Specifically, I asked Winnie Ore if [REDACTED] had given you any direction on the appropriate process for a council or board to evaluate an executive director, and she said she didn't know, so I want to check with you.

I worked with [REDACTED]. There was a lot of [REDACTED] and I not making connections, and it got toward the August meeting, and Winnie said we just needed to do one.

Did [REDACTED] give you direction on the appropriate process for getting input from the full Council?

We were never there yet. He never gave me direction on the appropriate process [because we weren't that far into it yet].

Please tell me about the 2012 EPP process.

I had a whole lot of things I wanted to take before the EPP process, but you get busy and I wasn't getting anything from DOJ. Carrie Whitlock, who now works for the Historical Society I think, was the person I used to work with at DOJ, and she kept me informed. At the meeting, someone asked, where are we with the budget request, and I said I had to call and see where we were at. I called Candy Mullenbach, and she said they already had the meetings and that I missed them. I asked why wasn't I invited. During the last session in 2009, I was invited, we went up, and met with DCI. In 2011, the direction from the Council was that we weren't going to ask for anything. For the 2013 session, I knew there were things we needed, and when I finally contacted them up there, they said, we already had the meetings and you were left out. This was in the springtime. Steve would know the dates. When I contacted her, she said we were left out. You don't hear, and you finally make a phone call. I've never been given real clear direction on what they want. This goes back to the code of ethics.

Please tell me more about your personal business in relation to testifying in Missoula. I am unclear as to where the line is drawn.

When I took the job as POST Director, I spoke to McGrath and Patti Keebler at the Governor's office. My involvement for pay as far as my personal business was up to the deposition.

[Questioning me on this] borders on witness tampering.

I have a private business. I do concrete finishing, roofing, siding, its whatever.

Do you still do law enforcement-related consulting or training as part of your side business?

My bet is that Dennis McCave brought this up too. At the beginning, my position description stated I would conduct training as POST director, so there was no way I could do training as part of my private business. I could not do contract training in Montana, but I could do it in other states. I did it in Hawaii, I kept busy. At a Council meeting, a motion was made and the Council decided training would not be part of my position description. Once it was agreed upon by the Council that it wasn't part of my job duties, it was no longer a conflict of interest for me to do training. I haven't done a lot, I did two in Glendive. I took vacation and it was on off-duty time.

Also, as POST director, we meet with officers at MLEA and speak at conferences. If it is in my PD, my contract training would cease.

Another concern was that you provided criminal justice information to [REDACTED], a psychologist.

No. Absolutely not. It was just our interviews, our stuff. It was our information and we are not a criminal justice agency. The public can ask for information once it's in the process. The issue with this deputy is still ongoing – a variety of complaints.

What do you see as the ideal outcomes or appropriate next steps?

Whatever it will be for me. Apparently the Council has a process in mind.

There were meetings going on before this happened, and it was crafted. Some of it has some merit, but it was crafted. I have seven months to go before I have 25 years, and that is a major milestone for a state employee with regard to retirement.

There was also an issue that I discovered where POST had a database with thousands of names and social security numbers in it, and it was unsecured. I met with DOJ IT, and they said it would be very complicated and take time to fix. During the meeting, a young man was taking notes, and after the meeting, he asked me, does it have to be social security numbers, or can it be a different identifier. I told him as long as it was a unique identifier for each individual, any number would work. Within a day, he had changed it and converted the social security numbers to a different unique identifier.

POST – Public Safety Officer Standards & Training Council
Organizational and Individual Workplace Performance Fact-Finding Interviews
October 2012

Name: Wayne Ternes 406-431-6844 wcternes@aol.com	Title: POST Executive Director	Date/Time: 10/16/12 4:00 p.m.
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I have two issues I'd like to follow up on that we didn't get the opportunity to discuss back on October 8th.

The first is your presentation to the POST Council on April 12, 2012 regarding Chief Nasset and the Kalispell policy (the [REDACTED] case) in comparison to Chief Nasset's recollection of events.

Specifically, on April 12, 2012 you stated: "We have good guy officers that tell us that said, hey there's an issue you need to know about what's going on. I said please tell me, so they filled me in, I just thought are you kidding me? So I call my good friend. I think he's my friend, we have been for 16 years, Chief Nasset at Kalispell police department. And Roger was great with me. I said, Roger really this happened? and he Roger literally just sat you could hear the sigh over the phone and he says Wayne I'm glad you called."

Chief Nasset's recollection is that he called you to give you a heads up; to get direction; and to tell you he was pulling the Criminal Investigation Bureau into the investigation in late October 2011. He stated that while he was bound by an agreement to not take any affirmative action against Thomason's certificate, he felt the way you portrayed it on April 12 was derogatory towards his office and inaccurate.

If you look at the dates and how it went, he took it as derogatory, and it wasn't his decision. He did call me prior to the investigation and said he had DCI looking at an officer, but he didn't say [REDACTED]. It wasn't derogatory to him, I was just pointing out that agencies were making agreements with officers to not send in a report to POST. I was pointing out that the Kalispell Mayor's Office or Nasset never notified POST as to the outcome. Nothing I said was incorrect. They didn't tell us, we were notified by an internal officer.

Did DCI ever give you information from their investigation?

No. DCI has stated that anything they do is confidential criminal justice information and won't give it to us.

It is embarrassing, but not false, and it is the way the system is set up. There is no mandatory reporting.

At the same meeting in April, when I continued to push these issues, Council member McCave made a comment to the effect that it was buyer beware with regard to agencies hiring people without background checks. You can listen to the tape to get his exact

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words. Also, at the same meeting, Sheriff Harbaugh made the comment that he had an aversion to regulating ethics through the POST council.

It was not meant to be personal, just to show we don't have a regulated, in-tact system.

It is my understanding Roger was frustrated because he did call you and notify you of the investigation, but when you presented it to the POST Council, you did not mention that he had called you.

Yes, but the outcome –we were not notified of the outcome, and we'll change the system to make it better.

The second issue was an alleged failure to follow up on a formal complaint filed against [REDACTED], for illegally recording a conversation with a former employee, [REDACTED] in July 2011. She said she filed a formal complaint with you and initially heard nothing back, and that she attempted to follow up several times after the complaint, and heard nothing until she got a letter on November 16th, 2011 from you saying that he knew this is frustrating, but that it is an internal issue and that POST wasn't going to do anything about it.

A violation of law seems to be the type of thing you previously indicated POST would look into. How come decertification wasn't pursued in this case?

Here's why, depending on what the attorney says I can and can't give out, including to you, [it is difficult to respond to some of these issues]. Clay has the case file, and did an investigation. I decided to take no action against [REDACTED] after Clay's investigation and report. The Mayor, and Chief, who we have an active complaint against, they did take care of it internally, and there wasn't a violation.

A police officer on duty and in uniform is taught to record information. In ARM, it sets forth the process we follow, and if a person doesn't like it, they can appeal to the Council, and she [REDACTED] brought it forward as a complaint. You would have to read the file to understand it.

Another concern that came about related to [REDACTED]'s concern is the possibility that [REDACTED] was one of your main witnesses in the Lake County issues. Is this true, and did this impact your decision not to pursue (or was there any sort of agreement with [REDACTED] in this regard?).

There was a possibility he would be a witness in Ronan, not Lake County, but we haven't used him and don't intend to. In Ronan, he was fired for giving us information - or because they thought he was giving us information, but that's a whole other issue.

[REDACTED] has been upset because she wasn't happy with the outcome of her complaint.

Did his status as a potential witness affect your decision to not pursue decertification?
It doesn't matter whether they are potential witnesses or not. We will deal with issues and cases one-by-one.

This thing [i.e., the various complaints and this fact-finding review] is so convoluted and mixed. I'm trying hard not to get into tit for tat. There is a lot of stuff behind the scenes that you are not aware of, and I have a feeling people are bringing this up for personal reasons. I'm not going on any attacks on these guys. I still haven't figured out Perry Johnson from Ravalli, but can give you a list of people who have personal issues. Burdick, Muir, Williams are upset for other reasons that they are not telling you. Muir did a for-pay expert witness that did not go the way he wanted it to go. He wrote a lengthy document on that case and they settled out of court, but we are going forward on a case with Chief McLeod out of Troy. I'm trying not to take this personally.

I'm trying to help you understand the politics. There is more than what is on the surface. People have to understand motivations and I don't know how to get that out there. Someday everything will be public.

[NOTE: There may be information in the POST records that Wayne needs to respond to allegations but does not have access to at this time due to the administrative leave.]

[Wayne Ternes' comments on second Interview (10/16/12):

Page 2: "I" decided not to take action in the [REDACTED] case after Clay's investigation and report. Your notes make it appear that Clay made the decision.]

POST – Public Safety Officer Standards & Training Council
Organizational and Individual Workplace Performance Fact-Finding Interviews
September 2012

Name: James Raymond 406-883-5588 jamesraymond@centurytel.net	Title: Polson & Ronan City Attorney	Date/Time: 9/25/12, 11:00 a.m.
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Please describe the nature of your interaction with POST and its staff.

Please understand some of this I know firsthand and some only by hearsay, and I'll try to be clear which is which.

It's a personnel issue here in Polson. I don't represent the officers individually in connection to their interactions with POST, but rather, I represent the agency. How I'm in it, there is a bit of history.

My interaction with POST staff blew up over local politics as far as I can tell. There was a hotly contested sheriff's race. I've been the prosecutor in Polson for 15 years, so I know a lot of these people,. The sheriff's race was hotly contested, and I think one of the candidate's platforms was a clean sweep of supposed corruption, which is unfounded. Some of the issues were long-ago done with.

An individual I don't know, I seem to remember his name as [REDACTED] in Kalispell, was charged with a Fish, Wildlife and Parks violation. He had a moose rack or meat he was allegedly not supposed to have. Turns out it came from a legitimate Tribal source of some kind. It started as a felony, then he was offered a misdemeanor plea, which he declined, then they ended up dropping the charges.

While he was being investigated, he claimed that in Lake County there was a coyote club or hunting club that included peace officers in Lake County that were involved in illegal poaching. It is a reservation county, so there are state, federal, and tribal rules regarding fish and game. So, this guy threw out a bunch of names, which subsequently, I guess Frank Bowen decided was his writ to investigate.

Frank looked into it, and as far as I can tell, this guy had no experience at all with investigations. In the course of this, Frank Bowen started making allegations regarding Polson police officers.

I've read the [Bowen's] investigative report, and I found it a complete shambles, there was stuff left out and a lot of second and third hand information. It certainly appeared he had a different agenda other than the enforcement of law. I think he bullied people, took testimony from third parties, and in the course of this, I believe Frank Bowen violated the rules regarding confidential criminal justice information by apparently supplying his investigation to POST staff. Only certain agencies are authorized to have confidential criminal justice information, and POST isn't one of them.

I believe that in trying to leverage his investigation Frank Bowen contacted POST, so the POST guys, Wayne and Clay come up here and make contact with me in my office. As far as I could tell, their purpose was to get me, the agency's attorney, to agree it was proper to construe our peace officer's refusal to cooperate with Frank was some kind of ethical violation. Also present was Doug Chase, Chief of the Polson Police, and John Stevens, the Assistant Chief, who can be reached at 249-5072. The Assistant Chief recorded the whole conversation.

Is this the conversion Mike Batista told me about where there conduct was unprofessional?

I didn't find their conduct less than professional. But what I thought was crazy was Wayne Ternes saying that it is a condition of a peace officer's certification that they have to participate in an investigation. He talked about the finding in Garrity as a justification, a Supreme Court decision involving law officers, which has subsequently been construed such that the real rule is indistinguishable.

I said that there is no way I can advise my client that their people have to waive their fifth amendment rights as a condition of employment

Wayne Ternes is a nice guy, and I like him fine, I just wish he'd do his job correctly.

Frank Bowen continued what I can only call stomping around up here, and POST continued stomping around up here, and it appeared they were doing their best to manufacture an issue where there was none.

The guy you should talk to is **Craig Couture, 270-3357, chief of the tribal police. He has documented everything**, and is reportedly sick to death of this. They [the tribal police] have severed relations with Fish, Wildlife and Parks as long as Frank Bowen is handling Lake County, or so I've heard.

At one point, in June, Deb Butler was the attorney for POST, so I contacted her and asked what was going on. Deb Butler said she wasn't sure but that FWP had just been in there and said there was no probable cause for any warrant; that they had looked at it and there simply was no probable cause. Looking at my notes, we spoke on June 7, 2011, and it appears Deb contacted me. She must have been working for the AG's office at that time, and got my name from John Strandell and Mike Batista with DCI with whom I'd discussed several of the issues. After Deb told me about this, POST and Frank continued stomping around – hammer and tongs, as far as I could tell.

In June or July of 2011, it was reported to me by the Polson Police Chief that all this was affecting the employee's work. There is no full-time City Attorney in Polson, it's a contract, and my office is not in city hall. Doug said there is a problem - all this bs is having a negative impact on the officers on the street and is affecting officer safety. It is also affecting the administration of justice because the local Office of the Public Defender is privy to the investigations, so when these officers are on the stand, OPD

may use it to question their credibility, even though no one's been charged and in fact there is no proof. OPD would be privy to confidential criminal justice information if they were defending a defendant, but if someone is never charged or there is no conviction, they should not have this information. So that's another question: where did OPD get the data?

So, that is how I am in it. This is what brought me to communicate with the POST Council and I sent them a letter in July 2011. I wrote describing how the requirements in the Administrative Rules of Montana do not agree with how their staff is conducting themselves, with several documented local examples. I never did hear back at all from POST on the letter.

Do you know if OPD ever used information about the investigation into the officers to question their credibility?

I don't know if it ever was. It never happened in a trial in my courtroom.

I was told, the day Wayne Ternes and Clay Coker came to see me that they first went to the courtroom and sat in the back while one of the officers under investigation was testifying.

I don't know what Wayne Ternes has going on. It is difficult to impute motive, but I can think of more than one from what I've seen.

Following Chief Chase's concern, these guys were threatening to jerk certifications, so we went down to the city manager and told him what was going on. We said we don't want to interfere with the investigation, but something needs to change. So, I was directed to get answers. I wrote that letter to POST, I communicated with FWP, and I talked to Wayne Ternes about him not having confidential criminal justice information. Wayne's response was to pull out a letter from 1994 saying he could have criminal justice information.

What is going on in Polson is only one piece of it. He was also stomping around with Craig Couture's office, which is not subject to POST authority. I'm told Craig told POST and FWP to get off his reservation, and don't come back on his officers anymore, but in a much more articulate manner.

I talked to Ranald MacDonald, who is the attorney for the tribe and a guy I know. Randall's only interest was keeping the tribal officers clear of whatever the crazy state agencies had going on.

My counsel to the Chief of Police was not to cooperate with POST at all. There was no other appropriate response given the level of unprofessionalism and the lack of credibility [displayed by POST and FWP].

After I dropped the dime on Wayne by writing the six page letter to POST council with the news reports, it appeared that Wayne was running for cover. I understand he has to

do what he has to do, but what he was doing did not agree with ARM, and the impact it was having on our people was substantial.

When I spoke before the POST Council in August, 2011, I didn't have anything to say other than, did you get what I wrote? I got some acknowledgement and I didn't press it. I've done a lot of research around public meetings, and have told my boards that they can't answer questions in the public forum. People will try to paint them into a corner. I don't ask questions of public bodies in a public forum because it's not appropriate for them to respond in this venue. So that's all I know: a couple head nods.

I gathered that Wayne Ternes was controlling the flow of information to his boss by claiming it was ex parte due to the quasi-judicial designation. That impression came from what I had heard at its meeting in August, 2012. I gather that the information to the POST Council had been controlled by Wayne Ternes using the ex parte justification.

However, it is not quasi-judicial unless there is a case. So, questions like, what is the status of the investigation? unless there is a case, is not an ex parte issue. It is your boss asking you what the hell you are doing.

Do you know if Wayne Ternes or Clay Coker ever used compelled statements?

I do not know. There were several Polson officers involved. [REDACTED];

[REDACTED] What they've told me is that they've never been interviewed by POST.

These officers had complaints filed with POST [against them], and none has ever heard from POST. They've never been interviewed. Still, POST filed actions against these people.

[When he met with me] he talked about the Garrity case, and I think he was testing the waters to see if that turd would float.

Wayne was asked specifically at the August, 2012 POST meeting if he'd ever given a Garrity warning to any Montana peace officer and he denied having done so. There is existing correspondence, along the lines of, Frank Bowen complaining about the fact that he wasn't getting cooperation from the Lake County officers, and Wayne Ternes' response was, I'll jerk their certificates if they don't cooperate. I have heard of but do not recollect seeing that letter.

Wayne Ternes filed certification actions and it is before a hearings officer, I've read them all, they are complete bs, and POST has never spoken to any of these guys.

When I had Wayne Ternes in here in 2011, I asked if he had any pending investigations against Polson city officers, and he said no. I later found that he had cases open.

I have a letter. I wrote Wayne and asked, on 8/20/11, if any of my agency officers were under any investigation and he responded that enclosed was the only complaint

officially filed, and it was against [REDACTED], a Ronan officer. [REDACTED] and [REDACTED] were going at that time. They have a lawyer and my office does not represent the officers individually in those cases. However I am told that POST has been investigating them since 2010, despite having assured me to the contrary a year later, but this is not something I know independently.

There is a audio record of a POST Council meeting back in August 2011, where Wayne Ternes, Clay Coker, and Winnie Ore can be heard on the recording talking during a pause and you can hear Winnie saying to Wayne, don't worry, we'll cover your butt. Haven't bothered to listen to it myself; but several Polson officers have so reported to me.

None of ARM 23.13.703 is happening. They are out of compliance with the administrative rules. This was an issue at the POST meeting last month. About thirty uniformed officers from around the state came and testified.

Please provide more information about the dissemination of confidential criminal justice information by POST staff.

An entire criminal justice file regarding a deputy was sent to a psychiatrist. A guy was defeated in an election and had heartburn over the Patriot Act. The defeated candidate made an issue about a deputy running their mouth about serving in the Marines when he really hadn't, so the defeated candidate lodged complaints with POST and the deputy had to serve a penance. Part of his penance included him having to talk to a psychiatrist, and he did what he was supposed to do, but the defeated candidate kept stomping. Wayne Ternes came into possession of the confidential criminal justice information and sent it to the psychiatrist. This didn't seem appropriate and it is not the role of a regulatory activity, and was a violation of provisions regarding criminal justice information which he was not supposed to have in the first place. The CJI related to the deputy in regard to alleged illegal modification or conversion of a firearm, I think.

A lot of these matters were in local papers and the information came from somewhere. You'd have to ask the Journal where they got their information, and they are unlikely to disclose this, but Wayne Ternes was quoted in one or more local articles..

I'll tell you another example. [REDACTED] called me from Idaho. He was there on vacation fishing, and they came into town where he had cell service, and he found that he had a whole bunch of texts from friends and relatives who read in the Missoula Independent that he was served by POST. The article included Wade's name and a bunch of other guys, and [REDACTED] wasn't actually served until a week later. The guy who was the process server was [REDACTED], and Clay was formerly the Chief of the Troy Police Department, and only Wayne Ternes, Clay Coker, and the process server had information about these people being served. The media got a hold of it before the people who were being served knew themselves, so somebody has to have told them.

This is a regulatory action regarding their license. If POST were my client, I would tell them that the process is a confidential matter until there is a finding.

Are there any other concerns that we haven't discussed?

I don't know if this is of interest, but I attended a Law and Justice Interim Committee meeting in the spring. I heard what was said. Wayne Ternes got up and talked about the specific legislative proposals that he represented at that time, I assume it is recorded, and gave the impression that the legislative proposals were sanctioned by the POST Council, which I later found out at the POST meeting in August, 2012, that they weren't. It is possible that Wayne Ternes talked to some people rather than having it as an agenda item that was discussed in a public meeting. I understand that he's got 13 bosses, and sometimes you have to call around to find some consensus in order to get things done, so maybe he did think it was approved by his bosses.

What positives or strengths do you see in Wayne Ternes?

I like Wayne. He is very personable, which is important. He has to deal with a lot of diverse people. To a degree, he represents internal affairs, which is a tough job. He strikes me as a pretty sharp guy – not a dummy. He appears to have a want to do a good job. He is trustworthy and willing to do a good job, all he has to do is follow his own administrative rules, and he'll be fine. I think Wayne Ternes can do the job.

He's obviously got a credibility problem which he may not be able to overcome, but he may have not gotten good guidance.

What do you see as the ideal outcomes or appropriate next steps for this review?

It is an important function [POST]. I belong to a regulated profession. POST is presently suffering from a basic public relations problem, and with cops, it is hard to repair trust and relationships.

An apology and a public statement articulating POST's commitment to the people in blue and brown around the state, and a bit of mea culpa would go a long way.

I think also that effective supervision of the staff activities has to be a priority. I don't know what that might look like with 13 bosses, but they can probably figure out something that will work.

I took the trouble to take a hard look at the existing ARMs and made some serious suggestions for amending for clarity and effectiveness, which I sent along to POST also. They might take a look themselves simply at the structure as I proposed it.

Attachment K

April 27, 2013

Chief Muir:

Doug Chase tells me that you and he had a chance to visit regarding what I can only describe as the abuses currently being perpetrated by POST under the guise of "officing the policeman" and which I find uninterpretable at best.

As a consequence of my role as city attorney in the context of a personnel issue, I took the trouble to collect and summarize the local impact in a letter to POST last July, and a number of local law enforcement people attended the Accus. meeting to re-inforce the local view of the issues. I only took some considerable trouble analyzing the ARMs applicable to POST and proposing a revision of them. I guess I both are enclosed. Doug seemed to think that you may find the analysis useful in your meeting next Thursday. I never heard a peep back from POST.

My guess, and I have seen all kinds of evidence and rough economic impacts locally, I have to believe the problem is not locally confined – but surely, the smaller departments are more vulnerable.

Let me give you just one recent example: Wade Nash, the chief in Polson, called me from a fishing trip in Idaho after having received numerous texts and phone calls that his name was in the Mission's independent as a police officer against whom POST had lodged complaints – and Wade had not even been involved in the matter. Logically, the Independent could have no other source for the names except POST. Yet he says later I was in the room when Mr. Ternes apprized the Law and Justice interim legislative committee that certification actions are "confidential." Yet I read of other examples in the enclosed. Something important obviously isn't adding up.

One could ascribe a variety of explanations for the absurd conduct of the POST director in the execution of his duties; I prefer the explanation that he's simply lacking proper guidance. I for one do not think it either fair to the peace officers or tending to aid POST's credibility. I intend to address the problem through legislation directed at supervision, guidance, probable cause, and proper procedure.

At the time I'll email you POST's handout to the interim committee, I had it scanned. My email – and the surest way to reach me – is james.w.mgrdy@congress.net. Feel free to call 261-6545 is my cell.

I thank you for your time. Happy to answer any questions.

James W. Mgrdy



Attachment K

POST – Public Safety Officer Standards & Training Council
Organizational and Individual Workplace Performance Fact-Finding Interviews
October 2012

Name: Clay Coker	Title: POST Council Compliance Officer	Date/Time: 10/3/12 9:00 a.m.
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Please describe when you were hired and your position with POST.

I was hired in mid-December 2009 as a Compliance Officer/Investigator. When I started, there were a few complaints, and in 2010, we logged 55 complaints total. Some were placeholders for fish and game.

Initially, I did a statewide audit. I drove to every law enforcement agency in the state to make contact and to get their current rosters and to get our names in the database up to date. We have cleaned up the system, and the number of names we had has gone from about 7,000 to about 4,000 active officers in the state. I also tried to train them on appropriate procedures for hiring and compliance.

I put together an administrative desk reference, developed forms and checklists, and helped local agencies put together manuals. I am the former police chief in Libby.

I found about 90% non-compliance with reporting.

Then the complaints started coming in. 55 complaints got a file, and another 50 or so did not get a file because they were not within the scope of POST or weren't substantiated. For example, a woman called to complain that a police department/officer was not helping her with a child custody case, so I had to explain to her that we did not look into those types of issues, only ethics issues.

I think the public got to know that we had an investigator, so we started getting involved. However, at that time, we only had a volunteer attorney for legal support.

What was the process for case follow-up and communication to jurisdictions?

I'd work the case up, document my findings, and would give it to Wayne or Deb and it would die there. In many cases, I would review what the agency did, and provide the information to the Council. We also worked through the MAPA process. The hearing officer would make a determination, then the Council could review or modify that determination.

Please provide an example of when you would give it to Wayne or Deb and it would die there.

For example, case 10-03, [REDACTED] my third case in 2010, we're going to hearing, through the MAPA process on January 24, 2013. I worked it up, there was a delay, then a delay and a delay. Deb didn't want to take it, but the Council wanted to take it to hearing. They directed Deb in May 2011 to go to hearing, and six months later Deb came back and offered a settlement, and the Council said, no, we want it to go to hearing. With [REDACTED], my report was written in March or April 2010, and at that time, Deb said, let's wait until the outcome of the civil trial, which took a year. Then we got Sarah Hart, who is performing. Now, I draft a letter, Sarah approves it, and we get it out. In the first week I took over [as Acting Executive Director] in August, we got 20 letters out. Now, for 2010, we are all caught up except for those are going to

Attachment L

hearing or the ones that are with the attorney; and for 2011, we are all caught up except for those are going to hearing or the ones that are with the attorney.

I recommended to Wayne Ternes that we close these cases [earlier], but it never happened. Since I have been the acting executive director, we have closed the 2010 cases.

Part of the improvement is the flow chart. We took an old policy, and made it into a flow chart. I get a timeline of 60 – 90 days, then get my findings to the Executive Director and he has 30 days.

Ever since the meeting [on August 15], we have mended a few fences and people are happy with the way it is going. We are kicking it back to the agency first. Before that, we would tell the complainant they had to go to the agency first.

For 2012, this process is working. We got behind mostly because of legal staff. Sarah has been on about six months. At the time she came on, she was both the MAPA counsel and the Council's legal counsel. Now, Sarah is our MAPA attorney and Chris Tweeden is counsel.

How did the initiative to create and review the flowchart with constituents come about?

Sarah took the policy, tweaked it into a flow chart, and we went over it on the 16th. Sarah looked at the MAPA process, and it may have been discussed on the 14th during the training.

What instruction was provided to you regarding the investigation process when you were hired?

I created the allegation form and the process for making a complaint. I used the Missoula and the Libby Police Department forms as a basis for putting together the POST one. I've gotten to where I can access the web page, so I can now go in and update things, put in forms, and post the flowchart. I can now access the webpage and provide updated information.

What was Wayne's role in developing the allegation procedure, forms, and the flowchart?

I put the case files together, and when I was done with what I was doing, I would forward the information to him, with findings. It was unfounded, can you contact the complainant and let them know.

What do you know about the concern regarding the lack of notification to the administrators about complaints?

I can't get in Wayne Ternes' head. I wrote letters for him, drafts for his signature, and I don't think they happened. I wasn't going to step over my bounds and send things out, but there are things that should have gone out.

Please provide an example.

I like getting stuff done in a timely manner. We need to send things out, but I think he may have been balking because he didn't have direction, and decided not to, or was looking for direction.

I send out a letter to the accused, and copy this letter to the employing authority. Now, it is working. Before, I think it was a communication issue.

When I got this job, I recreated forms, defined processes. I created a form for agencies to certify compliance with a notarized signature, the forms are now there, and answers to questions are there.

Attachment L

We teach a POST class, for one hour, and provide an overview of what POST is. I use the webpage and show them how to use it to get information and forms. It's gotten a lot better and it has been smooth. I have also put together a POST manual and flowchart. A lot of the information is right out of the Montana Operations Manual, and I talked to the Attorney General's office and got guidance.

Lake County is the whole anomaly of the thing. This situation goes back to the job description. I had no hand in creating it, but I heard about the position and saw it posted when I was in Afghanistan, so I applied, did a phone interview, and was hired.

I don't think the field knows what the position does. The job description told me what to do, but did not give me authority. People who wanted to cooperate would give us criminal justice information, and those who did not want to get rid of people would not give us the information.

I try to keep our focus on ethics, licenses, and ARMs. If I find something criminal, I refer it to DCI, but I don't even do that anymore because of all the heat, it is not my job.

With Lake County, the initial complaint came in the middle of an election regarding a deputy who claimed to have been in the military, and wasn't a veteran. When I got to investigating the complaint regarding the deputy who lied about his military service, all these other allegations started coming up regarding poaching and people knew I was doing the investigation, and Fish Wildlife and Parks asked, what are you doing, evidence has started moving around.

For example, I was in the lobby of the Kwa Taq Nuk resort taking sworn statements regarding the deputy who lied about his military service, and the fire alarm went off. So, I was standing outside in the parking lot with some Lake County Deputies, and I was holding an FBI briefcase, and others saw us standing there. So, they knew someone from an outside agency was talking to the guys, and probably assumed it was about other issues.

There are two camps in Lake County. Actually, three. Two camps are suing each other, and the third camp is the people trying to stay out of it.

Did Frank Bowen ask POST to help him get statements from the deputies?

Frank Bowen communicated with Wayne Ternes about whether POST was going to back him up with regard to the ethics code. Is it a requirement of the ethics code that you cooperate with investigations? This is a Council issue. Are we going to go down that line. People say they will "strive to work in unison with all legally authorized agencies and their representatives in the pursuit of justice" in the ethics statement, so are we going to enforce that?

There are also different standards of ethics in the state. MACOP wants to involve us in certain things that Sheriffs do not. And, we do not have a clear list of what types of issues we will get involved in. For example, if you have sex in a patrol car in some agencies, you are fired, whereas in other agencies, it is rite of passage. There is no consistency in agency ethics across the state.

One of the allegations MPPA had is regarding compelled statements. We've never done a compelled statement. We did talk about Garrity at a training session, but we have never done one. I have never taken a compelled statement from anyone.

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Did this topic come up in your meeting with James Raymond?

We met with James Raymond and Chief Chase and asked if we could talk to their people. Chase came to the meeting and said that his guys were losing sleep, but we hadn't done anything with any of his people. There are a couple [of complaints regarding **current** Polson officers] now.

*How did the current complaints against the **current** Polson officers come about?*

It was fish and game stuff. There is one regarding the current Ronan Chief, and one regarding Reynolds, the Undersheriff. With the director having knowledge of misconduct, under ARM, we have a duty to pursue it and follow-up on it. I think there are four Lake County cases that are moving forward and they are fish and game.

Where are these cases at [status]?

I don't know where they are at. Bowen has been moved. For these cases, all I did was compile a file for our attorney based on information provided by Fish, Wildlife and Parks [FWP]. Now legal services, Sarah, wants me to follow up and get more information and names.

What type of information did FWP provide to POST?

Investigative reports, but I am not sure where they are at with that, but we have been made aware of the allegations.

Since Sarah's been involved, we moved on four, but it was kind of like a heads up from FWP that there was something going on.

POST has evolved. It is not what it used to be. I've been to previous POST meetings **s** and I think the field is shocked that POST isn't what it used to be. There is a new POST, new authority, and new ARMS, and this is a rub with some people.

Another rub is that Wayne Ternes is not a former cop. Our previous executive directors were former police officers. I've been doing this job for seven weeks now, and it is very much like running an [law enforcement] agency.

Did the issue of compelled statements come up in the conversation with Chase and Raymond?

I thought we talked about voluntarily getting them to talk. We initially went to talk to Raymond about Ronan issues with [REDACTED]. The meeting was not about Polson or Chase's staff, it was about Ronan.

Do you have any information about the concern that information regarding the service of POST complaints to Lake County officers was leaked to the media?

We served papers for [REDACTED], and [REDACTED] about an issue with him and his son. We used the template we had from Deb and tried to serve them through the Lake County Sheriff's office. I **gave the papers to one of their officers who** gave it to the process server and the clerk logged them in, and the Sheriff was pissed off that we used his office [to serve the papers]. It was not illegal. After this, the Lake County Sheriff made a rule that POST paperwork can't come through the Sheriff's Office without the Sheriff clearing it. So, the next round, we hired [REDACTED] to serve them and he served the papers within two days. We had legal review on the papers before serving them.

How about the allegation that the service of papers was leaked to the media? The concern is that only three people, you, Wayne, and [REDACTED] knew about the service, so the media leak may have came from one of you.

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I think that when one person got served, that person got the word out. [REDACTED] did not talk to anyone and I did not talk to anyone. I can't speak for Wayne, but don't believe he did. I even asked one of the reporters, where did you get this information, and he said he had sources [but would not reveal them].

We were subpoenaed for the FWP records by the Office of the Public Defender. The first time, Mitch Young got the subpoena quashed. They subpoenaed us a second time, and we let Mitch Young [the Lake County Attorney] know and he never responded, so we sent them out so as not to be in violation of the subpoena.

What do you know about the issue raised by Roger Nasset?

I've had a conversation with him since I was appointed acting director, I called him. When we were going to the Law and Justice Committee, they wanted certain things such as information regarding unreported misconduct. For example, Gootkin fired a guy for breaking into an ATM, but the official reason provided by Gootkin is that he was fired for policy violations, so the other chief called us and told us they guy had broken into an ATM.

On the Nasset case, Wayne said a city police officer was allowed to resign while under investigation for partying with kids. Nasset said he called it in to POST. I was totally oblivious to that, but I don't doubt him. Wayne Ternes told me that a confidential informant within the agency came forward. Nasset said he called to talk to Wayne, and said that I may have been there, but I don't remember the conversation, but don't doubt it happened. Wayne didn't remember or maybe he got confused. Wayne told me that he was notified by a confidential informant, so it went on the list [of unreported misconduct], but apparently Roger did call him.

Another issue that came up from Chief Muir was the [REDACTED] case. That was a surprise to me, because I was there. Muir called and asked the status of [REDACTED]. I checked and didn't have a file. Muir called and had recordings of voicemails, so Wayne Ternes went through boxes and found it. It came in, and Wayne Ternes assumed that when it came in, he had run it by Deb Butler and decided not to do anything. Muir had a legitimate complaint. It's moving through the process now, but the ball was dropped. We assumed it was because Wayne and Deb had reviewed it and decided not to do anything.

Any other major cases or issues you would like to talk about?

They are pulling me in with Wayne Ternes. They are saying they don't trust us.

The one that was pinpointed to me was the academy legislation thing – they were looking at me. When I first started in 2010, before the 2011 session, Wayne Ternes told me to look at the statutes, such as the one where a mayor can appoint someone as a police officer for 30 days without training, to see where we could improve. So, I played with statutes and wrote drafts in the bill format, and one of those was about what it would look like to move MLEA under POST like it is in most states. So, I wrote these things up in 2010 and 2011 – three or four versions of legislation. I also addressed some issues like getting the terms constable and marshal out of statute since we don't have these in the state. Wayne was out of town and got wind that there was a beef between MLEA and the MHP about the MPAT test – it wasn't validated in our state, so the question came up, why isn't POST involved in setting academy standards. So, Wayne Ternes said, hey, show Alex Betz that thing you wrote up about POST taking over MLEA, so I sent it to Alex as a possible solution. I did not write it as a draft piece of legislation, plus Wayne called me and told me to do it. I tried to talk to Kevin after the meeting, and I told him things are not as they seem. It wasn't an attack. I wrote it up two years ago and was told to give it to Alex. I told Kevin Olson that things are not as they seem. An email went out saying it was done by me,

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and implying I was disciplined for it, but I was never reprimanded for it because I was doing what I was told. Winnie said it was dealt with as a personnel issue, and **implied** it was me.

Tell me about the presentation at the Law and Justice Committee.

Dennis brought up the question at the previous meeting, and Wayne Ternes found where he said that he was invited to speak at the law and justice committee meeting. The proposed solutions were drafted in the legislative bill format, and that was my fault. I wrote them up a long time ago, and wanted to do them in the appropriate format, so I used a legislative template. Shockley asked the question, and here was the fix. The roadblocks and issues were discussed between Wayne and Shockley, and I don't know that Wayne meant for it to come across as proposed legislation. I put the packet together when Wayne was out of town. He told me what to put in the packet. The content was sanctioned by Wayne, but I'll take responsibility for the format.

Wayne was gone a lot last year. His mom died and he had a friend die. He also went to a meeting of the international directors of POST and went to Billings a lot.

Does POST do training, was this one of the reasons he was gone?

He has his own consulting business, so the training he does is on his own. He has his own private consulting business and does that on his own time. I used to teach ethics, and I am certified to teach firearms, so I am available, but I think it is mending fences time.

Another concern that came up was staff travel, particularly when you all leave the office together such as the mayor's conference.

The mayor's conference was a quick overnight in Bozeman. We're staff and it was a small meeting with two portions and two different breakouts. Wayne spoke to the mayors, and we do the part on hiring and qualification for appointment, so me and Tana went. We also went to the MACOP, MPPA, and MSPOA joint conference to answer questions about compliance with hiring and getting people on board. I went to the police side and talked about this while **Tana** was on the sheriff's side talking about other issues, then I went to the sheriff's side while **Tana** talked to the police side. **Wayne was out of town and not at these meetings.**

There are a number annual trainings. The mayor's academy, the Sheriff's training at MSPOA, the joint MACOP, MSPOA, and MPPA conference, and the Board of Crime Control conference.

Tell me about the 2012 EPP budget process

I can tell you what I know. I knew little about it before the 16th meeting, before that it was not in my pay grade, but in the last six weeks, I have been learning a lot. CSD came out and did a little training on how to get information by line item.

At the meeting, they jumped on Wayne about the EPP not being submitted and he was going to check on it. When I got put in the seat on the 20th, I looked at it and got it submitted by the 26th, I guess there was still a window to get it in. It talked to the budget specialist, Eileen Rose, from CSD came out. This year's request included two positions, a records clerk band 4 and a staff attorney, band 7, so I had to write the justifications as to what we were doing.

The field also complained that we are behind on data entry. However, one person is doing it now versus nine people doing it before when POST was under the MBCC. We brought in a temp, Mike Mehn's wife, and she came on the first of August.

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Life is better now than in the three years I've been here. The EPP stuff is ok, it's in. Eileen showed me how to read the state system, and trained Tana about Excel **budget** spreadsheets. We have cleaned up our records from 7,000 names down to about 4,000 names. The volume is the same as it was five years ago, but there is now only one person doing it.

Have you looked into a new or enhanced database to facilitate the data entry?

We were at the mercy of state IT. I know this program could do more for us than it is doing. For example, with the applications for upper-level certification you have to meet requirements for a certain number of years experience and a certain number of hours of training in certain categories. Now, I have to hand-count this stuff, I have a lot of man hours into counting hours. There are thirteen categories of training such as leadership, use of force, vehicles. **The program could categorize it and tell if a person is eligible, but now we have to do it manually.**

I just processed some disapprovals, there are three or four people who weren't qualified, so I am providing them information as to why they were disapproved. Now I have a track record as to why they were not approved, and I send out an email notifying them.

Many of the complaints were unfounded – compelled statements, the legislation.

The lack of trust issue is big, but is trust required? In the investigatory realm, there will be an adversarial relationship unless the agency is involved. I have no problem throwing it back to the agency if they are going to maintain a paper trail and do the right thing. The anomaly is bad conduct that is condoned by the agency, and we need to protect the public in these situations.

We need a common ground, a professional standard, and a list of issues that should be reported. Also, the more proficient agencies could mentor the smaller or less proficient agencies. Communication and mentoring those who are weak.

There has been fence-mending done in the last seven weeks, just with getting the letters out, maintaining and sending copies, and communicating.

Jim Smith was my Sergeant when I was Chief. Jim is the guy on the Council who writes a quarterly letter to Chiefs and I support him. Alex Betz **z** does the same thing for the state guys, a quarterly update letter.

I'm just holding the fort down. If it could run the way it is now running, it would be great, and will get better if we can get an attorney on board. We were getting a disservice from previous legal support **by not capturing the actual cost of doing business**

Is there anyone else you think I should talk to?

Tana has been here 5 years, and has seen the comings and goings of the office.

**POST – Public Safety Officer Standards & Training Council
Organizational and Individual Workplace Performance Fact-Finding Interviews
September 2012**

Name: Dennis McCave 406-256-6900 dmccave@co.yellowstone.mt.gov	Title: Yellowstone County Detention; POST Council Member representing detention centers	Date/Time: 9/19/12, 9:30a
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Please describe your history and the nature of your interaction with the POST Council and its staff.

My last reappointment was 2/12/09 – 1/1/13, but I have served on the POST Council since 1989. I came in when the detention center officers were required to be certified by POST, so I've been on the Council for about 20 years.

Clayton Bain was the first director, and I've seen the evolution and changes over the years . How it used to be, how it always ran, and the changes.

What are the specific changes you've seen [in how POST runs]?

Over the years, in the early days, the POST Council was a cross-section. For example, I am the detention representative and the reason I got on the Council is that detention is a discipline regulated by POST, and they wanted detention representation on POST. There was a time when there were up to 15 – 18 POST members including Fish, Wildlife and Parks, dispatchers, a citizen, etcetera.

The previous directors have been Clayton, Gene Kaiser, Oberhoffer, and Horsefall. All were law enforcement or had a public safety background. What happened four years ago, it changed. I don't totally understand why, but it came out from under the Montana Board of Crime Control and became a quasi-judicial board. In the process of changing it, they eliminated many disciplines that were represented on the Council, and as a result, we have lost some input and perspective.

Now, it is less than half local agencies, state agencies, and citizen representatives, but it seems one of the things that was lost is the nature of the representation by people in the disciplines overseen by POST. Dispatchers, FWP, and MDT no longer have representation on the POST Council.

So, there are less people, and you don't have the balance of input. I also understand you can have too big of a committee, but there are so many disciplines under POST, it seems appropriate.

The functioning of the POST Council, it is my understanding, prior to the reorganization was that the POST Council would elect a chair, but now, the POST Council has no say on who is driving the ship. This has been a major issue, not so much because of

Winnie personally, but because the Council did not have a say in who would be running it.

Winnie Ore, due to her historical relationship with Wayne, defended, diverted, and overlooked difficult issues. I've worked with Winnie Ore for 20 years, and have known Wayne about that long, and knew them both when they worked at Department of Corrections in training. I've always found Winnie Ore to be a high-functioning, intelligent person, and that she did her job as an administrator great. This dynamic between Winnie Ore and Wayne Ternes is difficult for me to understand. Winnie has put a steel curtain between Wayne Ternes and any questions.

In executive session, she made the comment that she hadn't heard these concerns before, and people told me my jaw hit the floor when she said this. She is a high-functioning, competent administrator, and she missed this. I didn't get it, and was amazed nothing was getting through to her for three years. I have brought issues to her. Concerns with Wayne and his attendance.

This is why it has gotten to the point it has. If she had addressed these issues three years ago, we wouldn't be where we are now. If the POST Council had addressed Wayne's issues, even though all law enforcement on the Council may not always agree, if the majority of them (public safety) feel we aren't going to do anything, then we will lose their confidence.

She's just not getting it. In her defense, she is retired and is busy with her retirement consulting job, so she can't bird dog everything, but the problem appears to be she trusted the wrong person and she kept blind loyalty and lost perspective.

When he presented to the Law and Justice Committee legislative drafts, I challenged it as inappropriate, and her defense was that they were not legislative drafts, and they were. Winnie trusted Wayne was doing the right things, and he wasn't.

That is why it has gotten to this point, and when I talk to other Council members I've told them I don't have anything personal against Wayne, but he should not be in charge of anything. He is incompetent in this regard.

Years ago, when Winnie Ore appointed a hiring committee, I volunteered and didn't get a call back. I asked who else applied for the Executive Director job, and she said, that isn't how the state system works, HR gives us names, and the committee makes a recommendation.

So it seemed to me, the POST Council was not given the information they needed to make a good decision. They did not get the full story. That is how it has been for three year. We've gotten crumbs of knowledge, and it's been filtered and we don't see the whole story.

Attachment M

There have been a number of problems. First, Deb Butler wasn't as proficient as she could have been, and was giving advice that may have been flawed. For example, not including the Council in a lot of issues, and I think her advice was bad. Partly due to her counsel, things have gotten to this point. The POST Council staff is totally distrusted and not doing their job.

It appears to me Wayne wants to be a cop really bad, and doesn't have a clue how to administer an organization. He is a good trainer. He can bs with the best of them and put on a good class that students enjoy, but to put him in charge of an organization – his skills aren't there and he has never been held accountable.

The ED is on their own and can make executive decision, and when there were challenges, Winnie Ore would defend him and throw up the steel curtain.

Then they started this whole ex parte crap, but they don't do anything positive. The committees don't do anything. Before, the subcommittees would get resources, but where are we now? We are told that we don't have the budget to provide subcommittees with resources, but we do have the budget for him [Wayne] to do all sorts of trips and trainings.

The Policy Committee. The last meeting, there were concerns regarding the lack of policies and procedures, and it is asinine that we have had no policies developed for four years.

Then, at the end of the year, we get an email from Wayne Ternes saying that we have a \$25,000 surplus that we are going to give to MLEA, which appears to be incompetence in managing the budget.

On the MLEA campus, they moved to new office space, and the Council has never been to the POST Council office. On my own, in December or January, I stopped by to see what the office looks like, and it was like Fort Knox. There is one-way glass and a combination lock, and they are so sealed off it seemed to be representative of their lack of accessibility. They are so sealed off, it is like they are hiding. I've heard from a multitude of sources that they never answer the phone, and never return calls, and that there will be days at a time with no one in the office.

They are not doing the job, but are out trying to be super-sleuths investigating corruption that is not there.

They are always behind on data, and it is my understanding that they are hiring a temporary for three months, she is doing data entry, and then leaving because her time is up, then coming back later and picking up right where she left off because no one has done anything in the interim.

Wayne Ternes should never have been held in the position. I've been serving as an expert witness on jail cases. On the [REDACTED] case out of Missoula, the plaintiff hired

Wayne Ternes as soon as he was hired as Executive Director. At the time of his deposition, he admitted he was being paid a stipend for then, and when it came to trial, in his testimony, he said he was testifying as a private citizen and that he was a long-time friend of the family. The judge ruled most of his testimony to be opinion, not expert testimony. So, talk about a conflict of interest. This set off a lot of alarms around the state. The POST Council was never made aware he was doing this. He has never made a comment about his involvement in this case. In January 2009, I got his deposition and was looking at it and thinking it was inappropriate. So, I emailed state human resources to get a copy of the Executive Director job description for my benefit and to see if his is a classified, exempt, probationary, and if what he is doing is in line with the job description.

I got a call the next day from Mike Batista asking why I needed the PD. Apparently the gal from state HR called DOJ HR and they told Mike some guy from Billings was asking, and Mike got me a copy.

We have an executive position who is employed the same as a regular clerk with tenure, seniority, etcetera. I am a captain, and I am exempt.

It would seem to make more sense to have an ED in an exempt position. Making it a regular state permanent position was a mistake.

I understand Mike Batista talked to Winnie and his comment was Winnie said she knew about this and it was ok. I recall Mike was advised that we (POST) would be advised of this.

Wayne Ternes' contention that he spoke to the Attorney General and the Governor's Office, maybe he did or he didn't, but the fact that Winnie Ore did not let the Council know is a problem.

I believe Winnie Ore came to the conclusion that she was the supervisor of Wayne, but the chair is not, the entire Council is. All things should go to the POST Council.

He should have never been put in the position, but I can't tell you who the options were because we've never been given the information. It has spiraled and we are way off base now, and the POST Council is dysfunctional and not productive and needs new leadership. Bringing in a new chair will help. Hal Harper will be positive.

The bottom line is, Wayne Ternes should never have been left in the position. He is totally incompetent to have the position and should be put back in a classroom.

Describe your observation of Wayne's budget management.

I have heard there was a conversation, within the last month, Wayne Ternes made a comment at the meeting regarding something to the effect that he wasn't made aware of the budget submission requirements and wasn't notified, and someone told me that DCI

had numerous contacts and notifications and that they had let Wayne know months ago.

Please describe your knowledge of the legislative initiatives to get criminal justice and peace officer status including whether they were discussed prior to Wayne's Law and Justice Committee presentation.

It's true there have been discussion about these issues, it was discussed, but how it got to the Law and Justice Committee, in my opinion, is you have Jim Shockley who likes to stir things up, and had concerns from his jurisdiction. We talked for at least a year, but nothing was ever said about needing to take it to the Law and Justice Committee. I made the comment, we never knew this was going to the Law and Justice Committee. I checked the record, in the POST Council meeting, the week before the Law and Justice Committee [in April, 12th 2012]. At 5:56, Wayne said we've got a request from the Law and Justice Committee to answer two questions, how are we getting the criminal justice information we need, and how is the system for MAPA working for the POST Council, and from that, the following week, he showed up [at the Law and Justice Committee] with a binder with lots of things including two bill drafts. In his discussion before, there was nothing about it [bringing bill drafts to the committee]. We weren't notified he was going to the Law and Justice Committee. This type of thing has been going on for three years. He does what he wants and we are left in the dark.

I was up there to testify on suicide bills with the Law and Justice Committee in the morning, and Wayne was there with Clay and Tana at the Capitol. I was scratching my head wondering why Clay and Tana were there. Why weren't they back at the office answering phones and entering data? This emphasizes his incompetency and lack of administrative mentality.

I was interested in Wayne Ternes' response to those two questions. Then he got up there and gave a presentation on proposed legislation, and it was nicely printed in the legislative bill format.

What did you know about the potential legislation for POST to take over MLEA?

When I know about that is that it was forwarded to me by Mike Batista or Kevin Olson, who got it from the Colonel. The Highway Patrol representative on POST was contacted by Clay. They are claiming it was just Clay's doing, but I have doubts. Clay sent it to the POST Council MHP representative, who sent it to the Colonel, who sent it to Mike and/or Kevin Olson.

The way it was explained off to us was, oh, no big deal, it was just Clay doodling, it was no big deal. I was thinking, why is this guy wasting job time to draft legislation to take over the academy? Supposedly, Clay was going off on his own, but I doubt that and if he was, it would be again another example of lack of supervision and limited abilities on the part of Wayne.

Did you have any personal experience related to the concerns about Wayne's failure to return phone calls?

Yes, I have this problem. If I have a Council question, I email it to Wayne, and 97 out of 100 times, I would get a response from Winnie Ore and not Wayne Ternes. There have been times when Wayne Ternes' email kicks back because his inbox is full. I brought this up at a meeting, and Winnie Ore defended him.

Wayne spends a week or days at a time doing training, and spends the majority of his time doing training. It is not a good use of POST Council resources to have the Executive Director doing self-defense training. (see subsequent email regarding time and attendance issue).

I never get a response from Wayne. It usually comes from Winnie or Tana.

There is not a law enforcement officer in the state that I've talked to who has called the POST office in the last 4 years and gotten a live person to answer the phone, ever.

What is your knowledge about the concerns with certifying and recording training or processing decertification?

Clay Coker comes up with asinine, ridiculous reports that mean nothing. There [on the report] is the next investigation, but what has he been doing for the last three years?

We see the POST Council doing nothing, and see this building list of pending case. I don't know what Clay Coker has been doing the last three years, but it certainly isn't compliance work. It strikes me, from meetings, they are saying it is not clear in law. So, grow a backbone and make a decision and act like you have a job duty and responsibility. It is asinine that these cases are not being closed. Things are started and are never done, and when we ask about it, they claim ex parte, and do not get us the information needed to make decisions.

Do you have any other concerns that you brought up that you feel were ignored or redirected?

Well, to recap, there is his involvement in civil cases as the Executive Director, which is a conflict of interest; there is the time spent training; the lack of response – is Wayne Ternes spending his day doing POST Council work? He fabricated a spreadsheet about two years ago showing what he did every 15 minutes of the day. He is not in Helena most of the week, and has issues with attendance and productivity.

The Curriculum Committee, we were going to review curriculum, and asked Kevin to submit the curriculum. Kevin Olson brought in the first 120 hours of law enforcement curriculum, and he [Wayne] was going to get it to us in. I saw Kevin Olson, who told me he had dropped the information off to the POST Office three months ago, so I called POST and they got it to me. I reviewed the curriculum with my detention center constituents and was going to make a motion to approve them at the next meeting. Jim Smith said, I'd like to look at them [in January or February]. Last month [in August], I got them back from Jim. As we were talking about this at the Council meeting, Lewis said he'd like to see them too. So, we've been working on this first 120 hours for several months, whereas if we had a [Curriculum Committee] meeting, we could have went

through it and got it all approved. This is an example of how incompetent and ineffective the Council has been over the past four year, and at this rate, it will take three years to review and approve the law enforcement basic training.

We need competent leadership and Wayne is not it. As far as the compliance thing, I hear frustrations and see growing lists, so it seems Clay isn't doing the job either.

Do you see any strengths and opportunities with Wayne Ternes or Clay Coker?

No. Neither. I don't know what type of supervision it would take with Clay. He has lost a lot of trust, and I know there are a lot of people that won't trust Clay Coker in their record room. I don't trust him.

I don't trust either one to competently do the job. Wayne's problem is competency, but I think there is more to Clay than just a lack of competency.

What do you see as the ideal outcomes or appropriate next steps for this review process?

We need to purge staff. Tana might be salvageable, I don't know if she has caused any of the performance problems around the state. But Wayne and Clay need to go. If you don't replace Clay, you need to have a supervisor with a stick and a backbone to monitor him.

My perception from last month, I was in awe of the presence that there was from Sheriffs and Police Chiefs from around the state who took days from their schedules to express their frustration, and it was done for me there. There isn't going to be a regaining of trust with these two, so purge them and start over.

Do we continue to run a dysfunctional organization because someone wants to keep their job? You can find another spot for them, but keeping them in the POST Council will be detrimental to our mission.

Do you feel there is anyone else I should talk to?

Kevin Olson

Mike Batista

I also want to know who [REDACTED] is, and why Wayne Ternes is her daddy. There was apparently a complaint filed by citizens with a concern regarding [REDACTED], and when the Police Chief didn't respond to their concerns, they brought them to POST. The complaining party from Boulder Montana showed up at the POST Council meeting, and said, 'we don't understand why POST isn't doing something about this, and when we told [REDACTED] we are going to the POST Council, she said, go ahead, Wayne Ternes is my fu**ing daddy.' This was probably a year ago, last August [2011]. The Council did not address it. There was a lot of eye rolling and snickering and smirking, and it was dismissed and we moved on.

Attachment M

We should have looked into this. I have no idea if there was any follow-up to the statement or complaint, but that is how we rolled.

POST – Public Safety Officer Standards & Training Council
Organizational and Individual Workplace Performance Fact-Finding Interviews
September 2012

Name: Georgette Hogan-Boggio 406-665-9720 ghogan@co.bighorn.mt.us	Title: Bighorn County Attorney POST Council Member representing County Attorneys	Date/Time: 9/18/12; 10:30a
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Please describe how your history and relationship with POST Council staff.

The only interaction I had with POST prior to getting on the POST Council was a public forum where Wayne came and talked. My sheriff is kind of a lightning rod, and some members of the community wanted him removed. This was right around the time they did a recall election, and they wanted to know what POST could do to remove him. Wayne was very professional and answered questions. One officer had gotten hired and it came up that he had a deferred sentence on a felony, and there was a problem with the conviction, so Wayne came and described the decertification process. This was at a community meeting coordinated by a local radio station. I felt Wayne did a good job, particularly given the mood of the crowd – they were very angry. This was 2009 or early 2010, around the time of the recall.

When I talked to the Governor's counsel, I asked how they got my name. I was appointed after Bob McCarthy, the County Attorney representative, retired, and a couple of people, such as the tribal chairman, had mentioned my name.

What were your initial assessments of Wayne as an Executive Director when you came on the POST Council?

He seemed professional and friendly. My dissatisfaction with him came recently. I felt there was a shift in the Council. I started hearing complaints that he was overstepping his bounds. One of the things that was different than before, was that before, he was saying it was up to agencies to do background checks and to look into issues, and then that changed to POST doing more investigations.

When did this shift take place?

It is really hard to say. They were talking about the need to investigate this or that, but it was the early part of last year that I really heard more discussion about doing investigations. It was in 2011 when the shift took place.

However, I am not sure that I expressed it so much. I'm not sure I voiced that this is not a direction we should go. I was out for a period of time on maternity leave, and when I came back, the complaints were coming in. However, I feel bad because I don't know that I really expressed my concerns regarding this direction until recently.

What is your recollection regarding the legislation to give POST criminal justice status, and to give the Investigator Peace Officer status?

I think it was something brewing in Wayne Ternes' brain that they did not have peace officer status or access to criminal justice information. It came up with regard to certifying out-of-state candidates, and he expressed a concern, so to say it [the legislative proposals] was totally out of the blue isn't completely true, but when they told us at the POST Council meeting that didn't have a quorum – it was in June, but it didn't have a quorum, so we did a phone conference, that is when they talked about the testimony they gave to the Law and Justice Committee. It was at the second meeting. They informed us after it happened. I understand there was some L & J Committee testimony earlier, when I was absent.

My reaction was, slow down, this is a big deal to ask for criminal justice information. I was the County Attorney representative, and we hadn't talked about legislation and I didn't feel prepared for it. I wanted to present it to who I represent.

The Council was informed after the fact on the legislation. I know there were other ones on the conference call I had missed. They talked about legislation they would look at, such as law enforcement status, and it was my understanding that it would be looked at by a committee, not presented as a legislative proposal.

What is POST's legislative process?

I didn't even know if we had a subcommittee. They put information out, but it wasn't a formal legislation committee. I missed a meeting, but it was my understanding that we were going to look at it further, but I didn't know we would be progressing with it this year.

How about the proposal for POST to take over MLEA?

I had absolutely no knowledge of this. One of the other POST Council members told me, then I saw an email from Wayne saying it was something Clay had discussed with someone.

What was the Council's response to Wayne on these issues?

I don't know that we got to do much of a response other than to say, whoa, wait, let's pass on the fast track. I remember Steve Barry saying let's wait, and Dennis McCave saying let's hold on and look at this, and I think it was a unanimous vote not to fast track the legislation.

Was there any type of supervisor/employee discussion?

I don't think there was a 'don't do this' discussion, and the next meeting was the one where law enforcement was presenting their concerns.

Winnie sort of excused it. I talked to Sarah and Wayne. She kind of gave her blessing to it. I don't remember anything being directly articulated, and feel it was somewhat unfair to Wayne that there wasn't a 'no, you should never have done this.' I get the sense there was a check-in with Winnie.

Do you have any knowledge of a concern regarding a certification component that requires an exam by a medical provider being reported to the media by Wayne and Clay prior to being presented to the Council?

If anything happened with Clay Coker, it would have happened when I was there. No county attorneys reported this issue to me. However, the county attorneys were not familiar with the county attorney POST representative, and only recently have I had county attorneys approach me with concerns.

What are the county attorney concerns they have recently approached you with?

I got a sense from one county attorney regarding a concern with Clay Coker. The attorney said, without naming the case or the staff person that they were concerned he had investigated a case against someone who he had run against. I can get back to you on who this county attorney was, I have the information at my office.

On the issue with Lake County, the county attorneys felt like it was a black box, and that they didn't get a sense of the process. That they were kept in the dark and not informed of the process until the hearing phase. Also on Lake County, I got a vibe that was a concern that Wayne was saying one thing to them and another thing to us [the Council], but that gets into generalizations, not specifics.

Was the issue of using Garrity or using certification as a means to get compelled statements ever discussed?

Not as a county attorney. The POST Council may have discussed it, but I don't remember.

The county attorneys also had a general concern about the legislation, some of which I have myself. Getting law enforcement status to get criminal justice information. Sarah Hart was saying she had to ask for information from the county attorney, and we already have legislation for them to get this information in coordination with the county attorney. So, we are concerned about having two tracks of investigation going on and would not like it because it could interfere with what the county attorney was doing.

Any concerns with office management?

Phone calls are hard. I've given up on phone calls and just do email, I've found this is a better way to get a response.

Do you have any information regarding the concerns about failure to act in a timely manner regarding decertification issues?

I don't know about that part of it. We meet monthly and I haven't looked at the paperwork to track timeliness, but I have witnessed direct complaints regarding the communication of this stuff at the December or November 2011 phone conference. I feel bad because I wanted to address it at the next meeting. Before December 2011, at a meeting, one of law enforcement came up and said, you did this and didn't even write a letter to me and I am upset, and Wayne Ternes' response was, that was our protocol versus just acknowledging that we should have communicated better.

Any other personal observations of Wayne's performance?

My concern with regard to Wayne Ternes' leadership is that Winnie Ore had designed a process and form for him to present objectives and he was to outline what he had done and what support he needed, and it was pretty empty. Mike Anderson asked why it wasn't more prepared, and I knew he had taken action on some items, but he hadn't articulated them on the form, so I was puzzled why he hadn't developed that more. I found it strange that he didn't have time to complete a very detailed form, but had time to line up a speaker from out-of-state, who ended up cancelling, who was going to talk about how their POST functions. I felt it was interesting that he had worked on this rather than completing the form.

What do you see as positives or opportunities with Director Ternes?

He is very friendly. He is able to respond calmly to heated issues, and doesn't respond emotionally. He is good at keeping his cool and is an articulate speaker. He is even-tempered and a good public speaker.

What do you feel could be done to rebuild credibility?

That is a hard one because I think what really needs to happen is a more clearly outlined process, and clear policies and strategies.

I don't know what can be done because so much of our reality is perception, and a lot of law enforcement perceives him as a liar, and I don't know how you come back from that. I don't know what you do when someone perceives you are a liar.

What do you see as ideal outcomes of this review, or the appropriate next steps?

I guess the next steps have to be rebuilding trust with law enforcement. We do have to have cooperation from law enforcement because a lot of it is self-reporting and we don't have the staff to investigate complaints without their assistance.

The ideal outcome is to figure out the next steps necessary for rebuilding trust, and then the next step, is I'm a procedure person, to get procedures and policies in place. We need to revisit the website, ensure there are clear written policies and procedures, and ensure there are established timelines. This needs to be clearer so if people contact POST it is clear what the public should expect and what officers should expect. Have those written down. This needs to be the level of management in place.

I don't feel people distrust the POST Council as much as they distrust Wayne. I don't know how to re-establish credibility for Wayne because there are folks who think he is a liar. Regardless of not answering phones – we can fix this – we can line out expectations and figure out a plan, such as ensuring travel is staggered so someone can always answer the phone, but who cares about being available if no one wants to talk to you? How do you rebuild the core if people do not trust you?

Have you personally seen Wayne be dishonest?

I have not seen him be dishonest, but have seen him be minimizing or dismissing concerns. I noticed him excusing his behavior first, then discussing the concerns. He

Attachment N

automatically shifts into, this is how you misunderstood me. I am not sure how to direct as a board or even reprimand as a board the way the director will act or not act.

The parts I respond well to may not be the parts that law enforcement responds well to. It is a difficult job, you have to respond to attorneys, law enforcement, the public and others.

I may have missed my opportunity to be a better supervisor or manager, but do not know how you reprimand or supervise a director.

Anyone else you think I should talk to?

I will get you that one county attorney's name, so please drop me an email so I don't forget.

Mitch Young, Lake County.

Mike Batista.

Did you ever get a hold of Bob McCarthy? Before we got Sarah Hart and after Debbie Butler left, they asked Bob McCarthy to help them out and review stuff, and I've heard that is why Bob got mad and quit coming to Council meetings. This is just something I heard, not that I know, so you may want to follow-up with Bob.

**POST – Public Safety Officer Standards & Training Council
Organizational and Individual Workplace Performance Fact-Finding Interviews
September 2012**

Name: Chief Jim Smith 406-293-3343 Libbypd-js@hotmail.com	Title: Chief, Libby Police	Date/Time: 9/17/12; 3:50p
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Please describe how your responsibilities as Chief of Police and as POST Council member and how your roles relate to the POST Council staff.

I have been on the POST Council since January of 2011, so all of 2011 and 2012. I represent the Chiefs of Police in the state. I recused myself from issues concerning Wayne Ternes.

I attending the POST Council meeting in August. The Montana Association of Chiefs of Police (MACOP) presented letters before, and spoke at this meeting. MACOP actually represents a minority of the Chiefs of Police in the state. I believe they include only 25 of the 62 Chiefs. The Montana Policy Protective Association (MPPA) also spoke, and they too represent a minority of the officers in the state. I believe they have about 300 members and there are about 1,000 active law enforcement officers in the state. MACOP gave a vote of no confidence, but could not list the specifics that I heard, and were ambiguous about their complaints.

When we went in closed session, there wasn't even a vote taken, and it was decided we would put Wayne Ternes on administrative leave pending an investigation, and I told them I was not going to participate [in this action]. It is my understanding we have nothing [as a basis for a suspension].

For almost two years, I have been the representative for the Chiefs of Police, and MACOP has not sent me any concerns other than their concern with the fact that they want me to join MACOP. I feel it is inappropriate for me to be a member of MACOP because they are a special interest group that only represents some of the chiefs, and it is my responsibility to the Council to represent all chiefs in the state. These are the only concerns they have ever forwarded to me.

I think maybe the fact that I don't belong to MACOP or MPPA may have been a driving force behind this. The tone I get from these organizations is the driving force behind the complaints about inadequate communication. However, since I was appointed to the POST Council, I've sent them newsletters on a quarterly basis, and I've never heard from them. Every three months I send out a quarterly newsletter. They were saying there is not enough communication, and I have to call bs on this.

To get back to Wayne Ternes, anything that MPPA or MACOP says, my personal opinion, is I don't see merit in the complaints because the allegations were baseless.

I responded to Muir's July 16, 2012 letter. I had prepared a response to what was written and was going to state my response at the August meeting, but the opportunity never arose. I did prepare a response to most of the concerns and I had written to chiefs and told them about issues twelve months ago, and never heard from them.

Do you have any first-hand knowledge of the concerns brought up regarding the certification of training (accuracy and timeliness)?

I don't have a hand in it. It is the daily responsibility of staff, and they need to hire more help. They have 56 counties, 63 police offices, the Montana Highway Patrol, the Division of Criminal Investigation, Fish, Wildlife and Parks and other agencies to serve. I can't fault staff for being behind on this.

How about the communication issue – specifically, communication regarding certification and decertification actions.

Chief Muir out of Missoula submitted information to have someone decertified. That was the only thing he could cite regarding his no confidence vote for Wayne. You're going to have one fall through the cracks every once in a while. I have a problem with the way the whole system works. We have hearings scheduled in January, and some of them are for incidents that are 2 – 3 years old. One allegedly happened in 2007, so I have a problem with how this system works.

I think Wayne Ternes dropped the ball administratively. He has been director at POST since 2007, and has never produced an operating procedure. The first thing I did when I took over as Chief of Police was to revamp the policy manual and procedures. Since 2007, he has not produced anything for us to review as far as a policy manual, and that needs to happen.

The investigator position is relatively new. It was approved in 2009, and Clay Coker was hired in December 2009. It is a Compliance Officer and Investigator. Compliance includes [ensuring agencies are] sending paperwork to POST and ensuring paperwork is up to date. Clay traveled a lot the first year to see offices and check training and personnel files to ensure they were what statute said they were supposed to be. Then he started looking into complaints in late 2010 or early 2011

When I took the seat on the Council in January 2011, he had two or three investigations into ethics violations that were presented to me in May or April 2011, and the POST Council voted to move toward revocation, and these actions still aren't done.

I assumed he had a manual, but apparently that never happened. He never did a policy or procedure manual and got it in place. I believe that in the last thirty days, as Acting Director, Clay Coker has come up with a policy manual.

What do you know about the three legislative proposals, were you aware of them?

Yes, he brought it to the POST Council though a telephone conference call in May or June. There were 10 – 12 items discussed and I believe those items were part of these 10 or 12.

Sarah had discussed that when Clay Coker does an investigation, agencies are afraid to give him criminal justice information because they would be giving criminal justice information to someone who is not authorized. It would really shorten the time and workload associated with getting information if they had this status.

Was this before or after the Law and Justice Interim Committee hearing in April?

I was under the impression that it was presented at the July meeting and there was a telephone conference call in early August, but now that I think about it, I think this happened earlier in the year. I think we were made aware of it in March, and then Wayne went to the Law and Justice Committee.

One of the state senators came to the meeting in August and was championing the legislation and Sarah wanted to know if we wanted to push it through.

I do believe we were made aware of it in the spring, and we went through and told them we wanted to table 4 or 5, and wanted to move forward with others.

How about the proposed legislation to move MLEA under POST?

That was never legislation, it was a talking point. It came up last spring and I believe it was one of the items we discussed in March and it was killed, and was not moving forward or being pushed. MPPA got a hold of the information and assumed we were trying to push this, but it died.

The legislative issues were reviewed last spring sometime on a telephone conference, in March. A dozen things came up. I've heard all of this before, I voted against, but was defeated on other issues.

Putting Wayne on administrative leave didn't go to a vote, and if it did, I would have been opposed. Sheriff Harbaugh was walking on eggshells, but he is an administrator too. I was surprised how Steve Barry was ready to put him on leave readily, but some of the others don't have experience as administrators.

Do you have any knowledge of the allegation that POST staff required officers in Lake County to make compelled statements?

Any cases still pending, I have little knowledge of. Wayne Ternes and Clay Coker have never talked to me about any of the ongoing cases.

One of the things about this, the POST Council, if we are going to decertification hearings to take a certification away, will be the final judge, so when Clay and Wayne are doing the investigation, they have to keep us in the dark for us to remain impartial, so we can't be actively involved in the investigations.

That is why I was surprised to find out there was no policy or procedure manual. I called to find out about next month's conference call and Clay told me he had drafted a manual and wanted to know if he should present it to the Council for approval, and I said yes.

I think a lot of what MPPA and MACOP were complaining about is there is no procedure manual and there are different ways of doing investigations or they are being perceived as being done in different ways, being processed differently.

Since Wayne's suspension, things have changed. We've said look, when an agency complains or submits paperwork or we get a complaint regarding a police officer from the public, Clay finally did do it. He stepped in as acting director, sat down, and penned a preliminary policy manual.

Was it your understanding that the Compliance Officer position would also be an investigator?

It is necessary sometimes for post to be actively involved in investigating a non-criminal ethics violation because by statute, POST certifies and decertifies for us, and to fulfill that statute, we need to have POST look into these types of issues.

I am chief of a small department with six officers, and know that my ability to do an objective investigation on one of my officers might be biased, and that is the scenario occurring in Lake County. What do you do in those circumstances? You may have an administrator who is also guilty of an ethical violation.

Has the Council taken a formal position on the issue of using compelled statements or using Garrity?

No. We haven't gotten into that yet. Clay has only been into investigations since 2010, so the investigations program is still in its infancy.

In August, I asked if they had a policy or procedure manual. The answer was no, and I went through the roof. This is the only fault I see with Director Ternes, he's dropped the ball there. These things MPPA and MACOP put out could have been handled without a suspension. In the almost two years I've been on the Council, we've never admonished Wayne Ternes or Clay Coker and in fact, have given them pats on the back. This is why I was against the suspension, we've never even given him a verbal counseling, and now he is suspended.

We went from one Council meeting where we were giving him pats on the back to suspending him the next Council meeting. I realize there are violations so egregious that you terminate immediately, but know that if you have a sub-standard employee out there, there has to be counseling and documentation of corrective efforts.

If it were up to me, the only fault I can find is the policy and procedure manual has never been done. He should have taken the initiative to do this, but was he ever told to do it? No.

What about his progress as Executive Director in relation to the business plan [Long Range Operational Plan]?

I wasn't really privy to what was going on with this. It was pretty much between Wayne, the Business Plan Committee, and Winnie. It did come out at the closed session that he had not done a few things on the business plan. It also came out that he had procrastinated and not submitted a plan, and the budget is now in jeopardy. From what I understand, Acting Director Coker has completed that item and submitted it to Steve Barry.

What do you see as the ideal outcomes of this review, and what do you see as ways to repair trust with the associations and constituents?

If trust is broken with MACOP and MPPA, so what? We don't work for MACOP and MPPA, we work for the citizens of Montana.

My opinion on the ideal outcomes depends on what your findings are. There may be other things I am unaware of.

Is there anyone else you think I should talk to?

You should speak to some of the non-MACOP Chiefs of Police. The Chief of the East Helena Police knows Wayne on both a personal and professional level. He called me when he heard Wayne was put on suspension and asked what was going on, and expressed that he was truly concerned about what was going on. I don't know of any other chiefs who know Wayne on a personal level.

I am leaning toward giving him another chance, but if the investigation comes back with a bunch of dark clouds, will have to reconsider.

He's been doing this for five years, and there are things he should've taken the initiative to do and figure out. Like with Clay, the first thing he did was the policy manual and got the budget submitted. I compare the two, and am asking myself, why didn't Wayne do this?

So, it is kind of like common sense would dictate that these [policies] would have been done four and a half years ago, and this is a major issue to me. We are the licensing body for police officers, and need to have our policies in a manual.

**POST – Public Safety Officer Standards & Training Council
Organizational and Individual Workplace Performance Fact-Finding Interviews
October 2012**

Comment from Sarah Hart: This is accurate based on what I said – with a few minor changes below - and I am comfortable with you sharing it with the POST Council. I am not comfortable with it becoming public, however. Several of my answers may fall under the category of privileged attorney-client information also, as they involve issues about which POST has sought and continues to seek legal advice.

Name: Sarah Hart 444-5797 SHart2@mt.gov	Title: POST Attorney Agency Legal Services	Date/Time: October 9, 2012 4:00 p.m.
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I would like to get your perspective and information regarding the concerns raised at the August 15, 2012 POST Council meeting and related issues that have come up during my fact-finding review.

The first thing I would like to understand is how the flowchart and policy reviewed at the meeting came about.

[REDACTED]

[REDACTED]

Who initiated the effort?

[REDACTED]

[REDACTED]

[REDACTED]

Do you have any knowledge as to why notification to administrators wasn't occurring prior to the new policy/flowchart?

[REDACTED]

[REDACTED]

[REDACTED]

Please provide an example of a time where the cases people were worked up about weren't necessarily reality.

[REDACTED]

Does POST have authority over elected sheriffs?

Comment from Sarah: This is ultimately a question that must be answered by Chris Tweeten, as POST's Council.

[REDACTED]

[REDACTED]

So how are these questions from constituents answered?

[REDACTED]

How would this question be answered by a constituent such as a sheriff or chief of police who are not being prosecuted?

[REDACTED]

[REDACTED]

Is service of process confidential?

Comment from Sarah: I think I misunderstood the question. My answer was based on the question of whether POST contested case files, and the documents in them, are public.

[REDACTED]

What do you know about Wayne's proposal or presentation to the Law and Justice Committee in April 2012.

[REDACTED]

[REDACTED]

What was the Council's response?

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

You mentioned earlier that there are now a high volume of letters going out. Please compare POST operations now under Clay versus how it operated previously under Wayne,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Was this happening prior to the new policy/flowchart?

[REDACTED]

[REDACTED]

Wayne Ternes told me that he and Deb Butler looked at it and decided it was nothing that the Council would act on.

[REDACTED]

[REDACTED]

Describe the previous process for revocation and hearing as it relates to the revised process.

[REDACTED]

How do you know what types of ethics issues you will look into?

[REDACTED]

[REDACTED]

[REDACTED]

If failure to participate in an investigation an issue POST would look into?

[REDACTED]

[REDACTED]

Why has there been such a delay on hearings?

[REDACTED]

[REDACTED]

Any other issues or concerns?

[REDACTED]

[REDACTED]

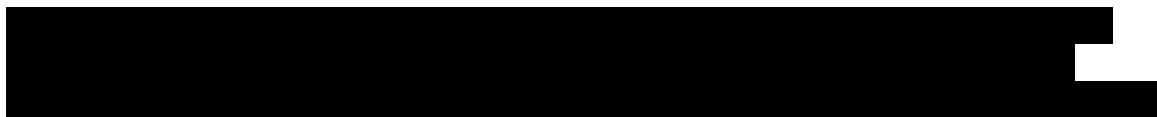
[REDACTED]

[REDACTED]

What do you see as the ideal outcomes or appropriate next steps?

[REDACTED]

Attachment P



STATE OF MONTANA
DEPARTMENT OF JUSTICE
AGENCY LEGAL SERVICES BUREAU



Steve Bullock
Attorney General

1712 Ninth Avenue
P.O. Box 201440
Helena, MT 59620-1440

CONFIDENTIAL MEMORANDUM
ATTORNEY WORK PRODUCT

TO: POST COUNCIL

FROM: SARAH M. HART,
Assistant Attorney General, ALSB
shart2@mt.gov, (406) 444-5797

RE: LJIC TESTIMONY AND THE OPORTUNTU TO "FAST
TRACK" CRIMINAL JUSTICE AGENCY STATUS AND
INVESTIGATIVE AUTORITY

DATE: July 16, 2013

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Attachment R

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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Attachment R

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Attachment R

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[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(e) the Montana Public Safety Officer Standards and Training Council, for the limited purpose of certifying or recertifying Public Safety Officers, conducting investigations into Public Safety Officer misconduct that may result in suspension or revocations of certification, and conducting certification suspension or revocation proceedings.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

44-4-405. Investigative authority. (1) The council shall have a limited ability to investigate complaints of misconduct by certified public safety officers, peace officers, or applicants for certification, only to the extent necessary to determine eligibility for certification, recertification, suspension, or revocation of certification. [REDACTED]

(2) Once minimal evidence of misconduct becomes available, sufficient to justify a suspension or revocation of certification, the investigation shall cease and 44-4-403(3) shall govern. [REDACTED]

(3) If at any time it is determined that an investigation pursuant to this section impedes or threatens a criminal investigation, the council's investigation shall cease until the criminal investigation is complete or there is no longer any conflict between the two. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Attachment R

[REDACTED]

[REDACTED]

[REDACTED]

NORMAN C. PETERSON
 Assistant Attorney General
 Agency Legal Services Bureau
 1712 Ninth Avenue
 P.O. Box 201440
 Helena, MT 59620-1440
 Telephone: (406) 444-7076
 Facsimile: (406) 444-4303

COUNSEL FOR RESPONDENT

**MONTANA TWENTIETH JUDICIAL DISTRICT COURT
 LAKE COUNTY**

DANIEL M. DURYEE, Applicant, v.	Cause No. DV-11-365
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WINNIE ORE, In her capacity as Hearings Officer in POST Contested Case No. 10-11, Respondent.	
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DANIEL WADSWORTH, Applicant, v.	Cause No. DV-11-366
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WINNIE ORE, In her capacity as Hearings Officer in POST Contested Case No. 11-14, Respondent.	
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**RESPONDENT'S BRIEF IN RESPONSE TO WRIT OF MANDATE AND
 REQUEST TO DISMISS THE WRIT OF MANDATE**

The Montana State Department of Justice Public Safety Officers Standards
 and Training "AKA" Peace Officers Standards and Training (POST) and the
 Respondent Winnie Ore, in her capacity as Hearings Officer in POST Contested

Hon. C.B. McNeil
District Judge
Lake County Courthouse
106 4th Avenue East
Polson, MT 59860
406-883-7250

RECEIVED
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AGENCY LEGAL
SERVICES BUREAU

**MONTANA TWENTIETH JUDICIAL DISTRICT COURT
LAKE COUNTY**

DANIEL M. DURYEE,

Applicant,

Cause No. DV-11-362

vs.

WINNIE ORR,
In her capacity as Hearings Officer in
POST Contested Case No. 10-11,

Respondent.

DANIEL WADSWORTH,

Applicant,

Cause No. DV-11-366

vs.

WINNIE ORR,
In her capacity as Hearings Officer in
POST Contested Case No. 11-14,

Respondent.

ORDER DENYING APPLICATION FOR WRIT OF MANDATE

The above causes came before the Court upon Applications for Writ of Mandate,
and the Court having held a hearing thereon January 18, 2012, and good cause appearing
therefore, the Court enters the following:

Order

1. The Application for Writ of Mandate in Cause No. DV-11-362, Daniel M
Duryee vs. Winnie Orr in her capacity as Hearings Officer in P.O.S.T. Contested Case No.

65th Legislature (2013)

BILL NO. _____

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT TRANSFERRING THE MONTANA LAW ENFORCEMENT ACADEMY AND ITS FUNCTIONS FROM THE DEPARTMENT OF JUSTICE TO THE MONTANA PUBLIC SAFETY OFFICERS STANDARDS AND TRAINING COUNCIL; PROVIDING AN IMPLEMENTATION PROCEDURE; EXPRESSING LEGISLATIVE INTENT; AMENDING SECTIONS 44-10-201, 44-10-202, 44-10-203 AND 44-4-301, MCA; AND PROVIDING AN EFFECTIVE DATE."

WHEREAS, section 44-4-403, M.C.A. states that the Montana Public Safety Officer Standards and Training Council shall establish basic and advanced qualification and training standards for employment and conduct and approve training; and

WHEREAS, section 44-10-107 states that the purpose of this chapter is to establish a Montana law enforcement academy to provide Montana law enforcement officers and other qualified individuals with a means of securing training in the field of law enforcement;

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 44-10-201, MCA, is amended to read:

44-10-201. Department of Justice Montana Public Safety Officers Standards and Training Council to govern academy. The Montana law enforcement academy shall be governed by the department of justice Montana Public Safety Officers Standards and Training Council.

Section 2. Section 44-10-202, MCA, is amended to read:

44-10-202. Powers and duties of department council. The department of justice Montana Public Safety Officers Standards and Training Council shall have the power and it shall be its duty to:

- (1) establish qualifications for admission to the academy;
- (2) select from among qualified applicants those officers and other individuals who are to attend the academy each year;
- (3) determine the curriculum and methods of training for officers and other individuals attending the academy;
- (4) select and hire staff as it considers necessary to implement this chapter;
- (5) establish rules for the conduct of officers and other individuals enrolled at the academy;
- (6) award appropriate certificates to officers and other individuals who successfully complete their training;
- (7) provide for the keeping of permanent records of enrollment, attendance, and graduation and other records as the department council considers necessary;
- (8) make a yearly report in writing of the activities of the academy. Copies of this report shall be sent to

POST – Public Safety Officer Standards & Training Council
Organizational and Individual Workplace Performance Fact-Finding Interviews
October 2012

Name: Sgt. Alex Betz 406-444-2025 (w) 406-465-3538 (c) abetz@mt.gov	Title: Montana Highway Patrol POST Council State Government Law Enforcement Representative	Date/Time: October 16, 2012 9:30 a.m.
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I would like to get your perspective on some of the concerns that were raised at the August POST meeting, and related concerns that have come up as part of this fact-finding process.

No one has talked to me about the August meeting. Major Butler asked me what was going on, and I was unable to tell him. I know that Winnie Ore resigned and that Wayne Ternes is on administrative leave, but that is about it.

I've been on the POST Council for less than a year. I took an interim position, and my POST appointment will end at the end of this year. I came on the POST when then Captain Watson had to step down. I have been very busy running two academies per year for the Montana Highway Patrol (MHP).

There were several of the complaints I looked into, such as the use of compelled statements, and found that they didn't occur, but I'd like to get information on some of the other concerns.

Yes. The compelled statements were discussed. The POST director from Idaho came and talked about how he runs his investigations, but I don't necessarily agree with compelled statements. Just because we are cops, we don't give up our civil rights.

One of the concerns was a lack of timeliness or completion in getting training certificates updated. What has been MHP's and your experience in this area?

I've always, my guys have always been certified. There is a wait time because we have to wait to have a meeting. I put a lot of onus back on the troopers, and I have a good administrative assistant who keeps track of everything. When we've sent paperwork in, we've gotten good responses.

We're you at the April 12, 2012 meeting, and do you remember Wayne's report regarding agencies that weren't notifying POST of issues? Do you remember his statements regarding Roger Nasset?

Yes, I was there. This was my first meeting. I sat there and said, wow. For me, it was overwhelming. I didn't know all the things POST was involved in. I knew they did certifications and complaints, but it is a lot of information to get and to try and keep

straight. It makes me have more appreciation for the POST Council members that have been doing this for a while. I was amazed how everyone had their ducks in a row.

Were you there for the discussion regarding Nasset?

I was there and remember talking about this kind of stuff, but I don't remember discussing this specifically.

On my own side, with the termination slips, if someone is allowed to resign and has done something egregious, we need to act. Public trust is all we have, and if we allow someone to resign and go away, if someone violates the public trust, there needs to be ramifications.

Someone has to be responsible to the public. A lot of agencies don't have the resources to do thorough background checks like the MHP does.

I don't think anyone is trying to blame people for not doing their job, but rather, it is a communication issue where people are taking things wrong. People need to know we are policing our own.

However it gets dealt with, it needs to be dealt with. Agencies are doing a good job, and POST needs to help them.

How does the MHP handle situations where an officer resigns before or during an internal investigation?

I'm not involved in this at all.

Trust is key to the whole thing. If the chiefs were wronged, we need to fix that.

What did you know about Wayne's presentation to the Law and Justice Committee in April 2012?

I know we talked about Law and Justice, but don't know what this meeting entailed. I have no idea what he presented.

Have you had any contact with Wayne Ternes or Clay Coker since August 20, 2012?

I called Wayne Ternes to see if he'd tell me what was going on, and didn't get any response. His phone was broken or something. I finally got a hold of him and asked if everything was ok, and he said he probably wasn't supposed to talk to me. I told him I was calling as a friend to make sure he was doing ok. I also talk to Clay and Tana as I work with them.

It is my understanding Clay emailed you a proposal for POST to take over MLEA. Can you tell me how this came about?

It wasn't an email. I was sitting in Clay's office talking about things, and at that time, I thought I was on the Policy Committee and the Ethics Committee, which I learned changed in August. It was a proposal, and Clay asked, what are your thoughts on this? I said that POST has a big stake in what goes on at the Academy and that I would push

it forward. I gave it to LTC Butch Huseby who was on the grounds at the time. If you read the proposal, you will see it wasn't a takeover, but more of an oversight role.

My job is to serve as a conduit, so I took it to the Lt. Colonel to get his thoughts. He got a copy and Colonel Tooley got a copy and forwarded it to everyone. After getting their reaction, I told Clay that this is not a good idea, and figured it was done.

So this was a miscommunication or misperception?

I agree 100%. Clay Coker said, let me know what your thoughts are, and based on my leadership's reaction, it was clear it was a no go.

I asked Alex to review the following excerpt from my interview with Clay Coker, and to provide his perspective of how this came about:

"The one that was pinpointed to me was the academy legislation thing – they were looking at me. When I first started in 2010, before the 2011 session, Wayne Ternes told me to look at the statutes, such as the one where a mayor can appoint someone as a police officer for 30 days without training, to see where we could improve. So, I played with statutes and wrote drafts in the bill format, and one of those was about what it would look like to move MLEA under POST like it is in most states. So, I wrote these things up in 2010 and 2011 – three or four versions of legislation. I also addressed some issues like getting the terms constable and marshal out of statute since we don't have these in the state. Wayne was out of town and got wind that there was a beef between MLEA and the MHP about the MPAT test – it wasn't validated in our state, so the question came up, why isn't POST involved in setting academy standards. So, Wayne Ternes said, hey, show Alex Betz that thing you wrote up about POST taking over MLEA, so I sent it to Alex as a possible solution. I did not write it as a draft piece of legislation, plus Wayne called me and told me to do it. I tried to talk to Kevin after the meeting, and I told him things are not as they seem. It wasn't an attack. I wrote it up two years ago and was told to give it to Alex. I told Kevin Olson that things are not as they seem. An email went out saying it was done by me, and implying I was disciplined for it, but I was never reprimanded for it because I was doing what I was told. Winnie said it was dealt with as a personnel issue, and implied it was me."

It was not an attack whatsoever, and I don't think anyone in POST wants to run the academy. Have you seen the proposal, it says POST is already approving the curriculum. It wasn't an attack, but was probably a really bad way of bringing the issue to light.

Kevin Olsen and his staff are and have been doing an incredible job, and I as the Training Sergeant for the MHP will continue to support their efforts in training the Law Enforcement Professional they are tasked with training.

There wasn't really a beef with the MPAT. The numbers were skewed and it just wasn't quite as fair as they thought it was, and we were trying to figure out how to fix the physical test. There was never really a beef between MLEA and MHP, but rather an issue. This was another one of those things where communication broke down somewhere. There was no beef, we just had to fix an issue.

Do you know if the issue with MHP and MLEA regarding the MPAT related to or was the impetus for Clay to provide you the proposal?

I don't remember the issues being related, but they could have been – either a specific concern or a general concern. I don't understand the reaction, but I also don't understand Montana politics. I don't know what went on between Wayne and Clay.

I got it in my hands, took it to my boss and he said, no way, and then it went viral, and I felt I was responsible for everything going wrong in POST.

I'm still trying to figure out what I did, and when I showed my boss, I was surprised by the reaction. I didn't have knowledge of what [the other issues expressed by the Chiefs and Sheriffs] was going on.

So Clay gave you a hardcopy, how did the proposal get emailed around the state?

Yes. He gave me a hardcopy and I showed it to Huseby at MLEA. I walked over to the Ohs Building and the Lt. Colonel was there, and I said, take a look at this. He said he wanted a copy of it, and the next morning Col. Tooley got a copy of it too.

I didn't understand why we couldn't just sit down and discuss it. It seemed like it went viral without any discussion. This is one of the issues I have with the email thing. Back in the day, we used to pick up the phone and talk. Now we hit send, and it affects communication and how we relate to people. Clay and I were just sitting around solving the world's problems and having a discussion.

Clay and Wayne have very different accounts about how this came about. As you read, Clay remembers he was directed by Wayne to send it out in relation to the issue with MLEA and MHP, and Wayne says he had no knowledge it was going out until after the fact.

Maybe this is a miscommunication between Clay and Wayne... and me, throw me in their too. I just don't know why we can't all get along, and we have asked for help. I don't understand why we can't just pick up the phone and talk.

Are there any other issues you would like to discuss related to the scope of this review?

I still don't know the scope of the review. If something is broken, we need to fix it. If its communication or trust, we need to fix it. We need to communicate, move forward, and do business differently in the future. It's all about public trust.

What do you see as positives or strengths with Wayne as POST Executive Director?

I think that Wayne is trying to do the right thing, but that it was presented poorly or people took it poorly. I think he will continue to do the right thing or what he perceives to be the right thing. We need to set up a way to ensure communication is improved and that there is no further communication breakdowns. I also know they are short-staffed.

What do you see as positives or strengths with Clay?

Clay is a very professional, motivated, and goal oriented. He wants to get a job done and move forward. He is an ethics instructor and I've heard him speak on ethics and he is ethically sound. But obviously, there is a communication problem.

What has been your interaction with the POST council over the last month?

Very little. I sent an email and tried to get information, and didn't get a response from anyone. You think that someone would have called from the POST Council.

How about your interaction with POST staff? How have things been going the last eight weeks?

I think they are doing just fine. Clay has gotten some things closed and moved forward. I will give them kudos – they were short staffed before, and are now ever shorter-staffed now. Georgette is now the policy chair. Clay came up with policies and it was handed off to Georgette and she is going to work with the policy committee to get it done.

The release of information policy was spoken of. We also talked about the allegation screening committee. I think they're moving forward, but it is slow. It takes time to get things done by committee

The agencies do the investigation and it is their house. If POST needs more information to take it to the Council, they should be able to ask for more information before they take it to a review committee.

It is the agencies' responsibility to do their own investigation and POST should fall on a role of support for those agencies and their investigation, and trust in the fact that they are doing them. If the investigation is complete, it is complete, and we move forward. I think we police our own very well and we will continue to do so and we will continue to improve. "We" meaning all agencies within the State of Montana.

What are your thoughts on POST getting criminal justice agency status and the investigator getting peace officer status?

There has been discussion of it, but we need to tread lightly on what types of powers are invested in POST, and any powers need to be well-defined and well-vetted by the stakeholder. You can't come into a Chief's yard and expect to run your own investigation. Ultimately, it is up to the agency. A chief will do his investigation as best as he can, and I can see where people would take offense [to POST coming in and doing an investigation].

**POST – Public Safety Officer Standards & Training Council
Organizational and Individual Workplace Performance Fact-Finding Interviews
September 2012**

Name:	Title:	Date/Time:
John Schaffer 406-453-8732 jschaffer@greatfalls mt.net	Lt., Patrol Services, Great Falls Police Department; POST Council member representing local law enforcement	9/21/12, 1:00 p.m.

Please describe your background and history with POST.

When I first got involved with POST, other than submitting training records, was in 2006, when I was working at training officer for the Great Falls Police Department and all paperwork and submissions to POST came through me.

We have a very active department with regard to training, so we have a lot of information going to POST.

I first developed a relationship with Wayne as a training officer, and he did training with me when he was with Corrections, before he became the POST Executive Director.

As training officer, did you experience first-hand, any of the concerns raised in August, such as the concern with not getting training and certification records updated?

We did have issues with training and certification. We had one officer who had to submit his information three times to get the information on the system, but I think this was a staffing issue [at POST].

That is how I got to know POST, and I was interested in the POST Council as a trainer. The guy who was the former representative for local law enforcement got a job at an airport, so was no longer local law enforcement and the seat came open. I am currently the Vice President of the Executive Board of the Montana Police Protective Association (MPPA), and in 2010, I was appointed to the POST Council by the Governor.

When did the difficulties you experienced with certification records take place?

It was ongoing and even recently, in 2011, an officer had to resubmit his command certification paperwork two to three times, and it took a process of close to a year. Another officer sent in his educational transcripts from college several times and they were lost so he had to re-request the transcripts. After the second time, we said, no, we are not going to send the original transcripts, we'll send a copy.

Was there any action taken by POST to ensure you that training records would not be lost again?

We didn't have any last time. We had a conversation with Wayne Ternes or Tana Meuer.

Did you have any other concerns with POST operations at the GFPD Training Officer?
Captain Shanks came to me on four or five occasions saying that he had called POST and no one ever calls back. I've always had Wayne's cell phone number and could usually get a hold of him using that.

Has GFPD had any problems with decertification?

Communication has been an issue and is an issue with any organization. I know Chief Muir talked about an individual they had submitted where administrative action was taken and nothing was done. I also know that the Council and staff were going through a number of administrative issues at that time, and that we had a lot of turnover with attorneys. But, I took from that that POST needed to be a lot more responsive. No issues at GFPD.

The thing I was concerned about with my organization is there were a couple of times where paperwork wasn't sent to POST. The old chief was concerned that submitting information could get us sued, but the new chief took over and got everything submitted.

Do you have any knowledge of the concern related to administrators not being notified of investigations in their jurisdictions?

We haven't had any investigations in Great Falls by the POST Compliance Officer.

What were your general observations of Wayne Ternes as an Executive Director when you came on the POST Council?

Wayne Ternes had good ideas on the directions he wanted to take POST. I worked in North Dakota for a few years, and there are areas Montana does well, and areas where we don't do well at all.

Training hours [continuing education requirements] for law enforcement was brought up in 2006. Mandatory training hours for officers, and that made sense. My hair stylist, and my wife who is a daycare provider have more stringent continuing education requirements than I do as a police officer.

We got the training up, but there was so much resistance from sheriffs. Cops don't like being told what to do, especially sheriffs because they are elected.

We started moving toward training, but then started to have issues with the Council. Deb Butler was reassigned, and then the other attorney was reassigned, and we finally got Chris Tweeten, which will be good.

There was a lot of indecision, and our constituents said we have to get our plates clean before taking more on. We need to get the reserve officers addressed, and look at hearing times. We need to prioritize and take administrative action steps at meetings.

The director [Ternes] has ideas on where he wants to take POST to the next level, but Montana law enforcement is not ready.

With POST investigations, one thing that came up was the use of Garrity, and I think that is an employer/employee thing.

We have a clear process now, based on changes that were adopted at the last meeting.

The biggest problem is that none of the agencies trust the Executive Director or the Compliance Officer. Guys in my organization have asked me if the POST ED is being investigated, and I can't tell them anything because it is a confidential personnel matter, but people know something is going on.

What have you observed that you feel has contributed to this lack of trust?

It is not so much what I observe, but what I am getting from other agencies. I am a member of MPPA and on the executive board, and the Missoula Police Department came up and testified about the fact that Wayne Ternes testified against one of their officers and that it was inappropriate for the POST ED to testify against a law enforcement officer.

Wayne Ternes said he was testifying as an expert on the use of force, but the term POST Director kept coming up in the transcript, and there were concerns that information regarding training records was released inappropriately.

Wayne Ternes told me at one point that he was told to do it by the Attorney General.

It cost Wayne a lot of change out of his pocket: Missoula wants nothing to do with him, and they are the second largest police organization in the state.

However, Missoula dropped the ball and nothing was ever sent to the POST Council [until recently]. The Missoula Police Association was going to send something, and it just went away, and at the last meeting (MPPA) in June, we asked about the trust issue and found out they never sent the letter.

Are there any other concerns or observations:

I know there was an issue with the Lake County investigation, but I wasn't privy to it. POST, allegedly, was doing an investigation in a jurisdiction without notifying the administrators.

Roger Nassett, the Chief of the Kalispell Police Department was concerned with how he was portrayed in a POST Council meeting by Wayne Ternes.

Communication is a big thing with a lot of people. They hear things and sometimes it is taken out of context.

I thought the last meeting with the associations was productive, and Wayne Ternes took a lot of shots to the mouth, but things are getting settled.

When I spoke with Jerry Williams, he recalled that you have concerns with specifics in the Montana Sheriff's and Peace Officers letter that were inaccurate, do you remember the specifics?

The director of MSPOA wrote it and wanted our signature and there were things in there that weren't accurate. For example, it talked about POST doing criminal investigations, and POST does not have the authority to do criminal investigations. It is a decertification action, not a criminal investigation. I also knew Winnie Ore would not accept the invitation. The last letter that was submitted by Chief Muir was a watered-down version of the first letter. When you say the POST Director and Compliance Officer were conducting a criminal investigation, it is not accurate.

You could tell the letter was based on emotion, so my direction, as executive board member was that I felt it was not in the best interest of the association to sign on to the letter.

Do you feel any of the concerns in the letter were inflated or exaggerated?

No. I think the concerns are valid and accurate, but was concerned with the letter in that they were taking second and third hand information as gospel, and that is not good business. You need to fact-find, and that is why Winnie had them bring their concerns up in the public forum.

Their concerns are real, and perception is reality in this business. If they don't trust the POST Director, how are you going to move forward?

Has the topic of using of compelled statements (such in Lake County) come up?

It has come up. We listened to the Idaho director talk about it. It was never brought up if our compliance officer was going to use it, but after the Idaho guy spoke, It was clear to me that no, we do not want to get into that. I don't know of any directives ever being issued to staff, and don't know if it ever being done. If they did use it, I would like to have known about it - if they were compelling statements.

The other thing that has really built walls regarding trust was Wayne's testimony before the Law and Justice Committee concerning new legislation. Those things were big and there was no direction from POST, but it could be said that as a director of an organization, you do prepare these things.

Did Wayne tell the POST Council he was presenting this legislation?

He talked about the fact that he was invited to the Law and Justice Committee, but I did not know about the legislative drafts. We had a discussion about the old AG memo concerning confidential criminal justice information, but no discussion about presenting legislative drafts.

There was also discussion about getting Clay Coker peace officer status, and how he had been told in Lake County, that you guys shouldn't stay here, it may not be safe.

I think there are times when we get over zealous, especially on issues that stir the associations' pots.

Another example was the initiative for POST to take over MLEA. It was not even something we had talked about exploring.

Why was this initiative drafted and emailed?

I have no idea. When I saw it, my reaction was, oh no, has the academy seen this? The only statement was that Idaho runs their law enforcement academy. I think it was Wayne who mentioned this.

What was the Council's follow-up with Wayne regarding the unauthorized proposals?

When this happened, it was in-between or at the time of the conference at the end of June, then the letters came out, so I thought, I'm not going to have a discussion with Wayne now, and will wait until the meeting in August. I didn't have conversations with people other than the members of the association or my department, and I told them it was nothing.

Does POST have a legislative process?

It is undefined. We have a policy committee, but no policy. We have thirteen people supervising three employees and one part time employee, and everyone on the Council has a full-time job, so without policies, we are in a jam. How is the ED supposed to know what to do?

I feel for Wayne because he is winging it, and sometimes he makes the wrong call and everything blows up, such as the legislation. I'm sure there is a job description in the state handbook, but I don't know for sure.

Is there trust in Wayne on the part of the POST Council?

The major thing that struck me at the last meeting is we're looking at database issues and things that cost money, but then we're giving away POST Council money to member associations at the same time. It is a nice gesture, but not what the money is for. It is for the database, hiring attorneys and auditors, and the like.

This is budget 101, and we need to start making better decisions regarding money and not sending it to member associations. It was around the same time that the letters and concerns from the associations came in that the offers to send them money came out. I don't know if the money ever went out.

The other thing was giving MLEA money for rent. We're not required to pay that, and the money could have went a long way for program development, the database, and legal fees.

As training coordinator, I had a \$50,000 budget for training available, and I would have gotten canned if I had given it to MLEA, especially when they were not asking for it.

Do you have any information about this year's POST Budget EPP process?

I know there was discussion at the end of the last POST Council meeting, and that it needed to be submitted. Steve Barry would be a better person to talk to about this.

Any other issues regarding POST administration?

As POST Council members, we hear gripes about the staff not returning phone calls, but can't think of other specifics beyond that.

One of the biggest things I remember is the member associations talking about unacceptable levels of communication between the POST staff and the agencies they are working with.

After the last meeting, we adopted a new interim policy where we made changes, and it is essentially a flow chart – an allegation is made, so what do we do next?

The member associations got a copy of the flow chart and the main changes were that when an allegation is made and POST is opening a case, a letter is sent to the supervising authority, or if it is concerning a police chief, it goes to the mayor or city manager. We went through the steps and made changes to the complaint policy – it will basically reflect the flow chart.

This was the biggest action we took – guys, how do we want to do this [involving the administrators], and the biggest issue was that they wanted to know what was going on. By the time we were done, the chiefs and sheriffs felt we were moving on the right track.

Who initiated this review at the meeting, was it Wayne?

I can't recall who brought it up. It might have been Wayne. I think so, but cannot be sure. It was near the end of the meeting. The 14th was the training, on the 15th the associations spoke, and on the 16th was general business. I think it was during the meeting on the 15th, because the flowchart review was with the associations present.

What do you see as strength, opportunities, or positives with Wayne Ternes?

He is a gregarious, outgoing person who is easy to like. I like being around him and the exchanges we have, and I think he is a good man. I think a couple of mistakes were made. I'm not sure Wayne has the administrative background to do what POST is asking him to do. Wayne Ternes is a good trainer. There are four people in the state who can do instructor development, and Wayne took me under his wing in this area.

He needs to work on the administrative function. Getting certificates, managing budgets, keeping the records up to date.

The positives are, when he is given the opportunity, and is face-to-face, he is a good communicator, but getting emails out and returning phone calls is a challenge for him.

I am similar to this, but as I've moved through the department, I've had to go from a guy who does the work to a guy who oversees the work, and I needed to improve in this area. I hate doing budget reports, but I understand why they have to be done.

What do you see as the appropriate next steps or ideal outcomes for this review? What does the POST council and staff need to do to rebuild trust?

That is the big question. Trust is what we need to focus on. The Council took steps at the last meeting, and this investigation is a good step, that we are at least looking into this and are being responsive to the organizations.

We have to ensure that as a Council, we have stakeholders involved at all times. This was the biggest meeting we've had, and we need to ensure our stakeholders stay involved.

If it were up to MPPA, MACOP and MSPOA, they want a new POST Director. I'm not sure that is the right direction, and will reserve my input until we get the information from you.

One of the things I am concerned about is Jerry Williams asked if Garrity or a compelled statement has ever been used, and Wayne responded no. In law enforcement, if you lie you die, and you have to be honest and forthright in thought and deed all the time. If there is anything that comes out that shows the POST Director was deceitful during proceedings, if it comes to light that Wayne Ternes or Clay Coker were deceitful, then that is a different matter altogether.

Is there anyone else you recommend I talk to?

The Lake County folks.

Roger Nasset, the Chief of Police for Kalispell.

Mark Muir

POST – Public Safety Officer Standards & Training Council
Organizational and Individual Workplace Performance Fact-Finding Interviews
August /September 2012

Name: Mike Batista	Title: Division of Criminal Investigation (DCI)Administrator	Date/Time: 9/5/12; 10:00a
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I. Opening remarks:

- Protection from retaliation for participation
- Requirement for truthful responses/avoid speculation (avoid liable/slander)
- Confidentiality vs. need-to-know; right to privacy; requirement to report any findings of violation of policy.
- Requirement/instruction to not discuss this with anyone else.
- Anticipated next steps/outcomes

II. Background

How do your responsibilities (i.e., your position and DCI) relate to POST?

I have served on the POST Council. We [DCI] have standard investigative responsibility, and the only areas we have original jurisdiction are narcotics and organized crime. Any other investigations come from requests from local agencies. This includes cases such as high-profile homicides and multi-jurisdictional crimes. We also do internal affairs investigations upon request. For example, a Sheriff, Chief of Police, or County Attorney may request an investigation.

We've done this a lot for smaller agencies and also for medium sized agencies, and even larger [by Montana standards] agencies such as the Billings Police Department or Yellowstone County, or the Missoula Policy Department. Sometimes an agency will do their own internal investigation, but usually they will request DCI to do it.

Is there any overlap in investigations with POST?

Sometimes there is overlap with POST if we do an investigation and bring criminal charges. We would provide information [e.g., criminal convictions] to POST for decertification. On the other hand, if it is an administrative issue where decertification should be considered, there would be communication directly between the [local] administrator and POST staff, such as wrongdoing or inappropriate behavior that does not necessarily constitute a crime would involve communication between the agency and POST.

This is a grey area POST has decided to venture into on their own without a lot of guidance. The POST Council is notified by an administrator of an issue and will ask staff to look into it. However, the review by Council members, which provided them with knowledge of what staff were doing has gotten lost.

How did this ex parte issue come up?

Either last session or two sessions ago [SB 273], the POST Council was moved out from under the Montana Board of Crime Control (MBCC) to its own quasi-judicial agency, and the ex parte discussion took place then.

Attachment U

Historically, the Council would hear information and later, if you were an officer and were sent a letter from the POST Council that they were going to hear your case, the Council was sent the information ahead of time. I never saw a situation where that caused a problem. The process also gave the POST Council an idea of how things were running.

When I served on the Council before, they had two good Executive Directors, Jim Oberhoffer, and Alan Horstfall.

Please describe in more detail your first comment in the listening session notes from 8/14/12 (i.e., "Has a history of doing investigations for 20 years and gets complaints daily, similar to what POST gets and he easily screens them in consultation with the chief or sheriff.....quick resolution").

I don't know the specifics of the POST process, but it shouldn't be too different from ours. We get calls from citizens complaining about local law enforcement agencies, typically people who are unhappy with the results of an investigation and people with mental health issues.

When we get a call, we know the right questions to ask to see whether there is an issue, and when there isn't. The majority of times we can figure out what happened with a call to the local agency, and can gauge whether it is a legitimate concern or not. Most times, if it is a legitimate issue, the local agency is responsive. If there is a serious complaint against an officer, the majority of times they will ask us to take a look at it. There are also issues we can't do much about. For example, there is a lady who always calls because she feels her ex-husband is violating their parenting plan. I also had an email and four conversations with a lady who was frustrated because her daughter is trying to work on a novel and words start missing from the computer. There are a lot of strange communications. POST may get some, and we get a lot, and you have to screen the issues.

Please describe in more detail your second comment in the listening session notes from 8/14/12 (i.e., "Wanted to discuss Polson and Lake County issues but couldn't because of ex parte issues. Mike has issues with POST conducting investigations while DCI is conducting criminal investigations....can't happen....lot's at stake").

This comment is intertwined with Lake County, which is a sore spot for me in terms of professional judgment, proper discretion, and communication with locals. At the listening session, I was surprised that local law enforcement agencies had a lot of other stuff they were concerned with. Lake County is a good example of what can go wrong without proper screening, judgment and discretion.

If you are an outsider, you could come to the conclusion that the place [Lake County] is out of control, a lawless county. I believe that perception came about because Fish, Wildlife, and Parks (FWP) started a lengthy investigation into allegations of poaching by law enforcement officers. During the investigation, a game warden stumbled upon old allegations and rumors, some of which had already been investigated, and all of which were old. FWP was not getting anywhere with their investigation, and they needed to reach out, so they reached out to POST and DCI. They reached out to DCI regarding some old allegations which had been investigated or were second or third hand, and we declined to do anything. They reached out to POST and Wayne Ternes and said we have a two year investigation and are not getting anywhere, what can you do to help us? Lake County was communicating with us, and John Strandell had a lot of communication with Wayne.

Attachment U

Wayne and Clay went to Lake County unbeknownst to the Sheriff, County Attorney, City Attorney, or the Police Chief, Doug Chase. They went up and met with the local officers and these guys and the meeting between Wayne and the local officers was recorded. James Raymond, the City Attorney in Polson has a copy of it and it was unprofessional. Wayne was laughing at things that they said, and the interview was not conducted in a professional manner.

The investigation by FWP continued. The current Sheriff was in a contentious campaign race with two people internal to the department. One of the guys was maintaining a website disparaging the Sheriff. These people, the guy who ran against the Sheriff and his friends were the ones who were raising the complaints regarding the Sheriff. One officer and his campaign manager met with me. The Fish and Game Officer met with me and I reviewed the investigative file and it was terrible.

██████████ was the guy who was running for Sheriff, and there was another guy who was his campaign manager. There were sweeping allegations of corruption on the part of the County Attorney, Sheriff, and others. For example, there was an ammunition theft case, but there was no inventory and no checks and balances, so there was no basis for a case. Also, the timing and motive brought their credibility into question. If these problems were going on before, why did they wait until the election to bring them up?

At the meeting on August 14, 2012, Wayne talked about how he gets involved in a complaint and said that he uses informants. The rule of thumb when using informants is you have to understand their motive. I met with Winnie Ore a month earlier to let her know what was going on. Lake County is a poster child for how you don't do the job effectively. Bowan and POST Staff, ██████████ and POST staff.

Wayne went before the Law and Justice Committee and said that due to Lake County, POST needed criminal justice designation and that Clay needed peace officer status.

Other agencies have or have had criminal justice designation, but the reasons were always clear and parameters defined. The Department of Labor and Industry and the Department of Public Health and Human Services had the designation for fraud investigations such as worker's compensation and Medicaid. POST should have criminal justice designation in order to get access to criminal justice information.

When the issues came up in Lake County, we called the Sheriff and County Attorney and said that ██████████ had made another complaint. There were twelve investigations in the course of a year. Of the last three allegations, two of them came from ██████████ and during this time, ██████████ was in communication with POST. Every time there was a serious allegation, the Sheriff or County attorney asked us to look into it. They were responsive and did the right thing. There were some issues with the Tribal police force. Another issue was that all three cases involved complaints where they were secretly tape recording others. I feel like POST got played.

At the listening session, Clay Coker discussed how he went about cases and said that the exception was cases that came to him from the director.

What do you know about the practice of POST staff using Garrity when interviewing people. Was this just a proposal, or were they actually doing it?

I think it was something they proposed, I'll step across the hall and ask John Strandell. John said it was a proposal, and that Doug Chase had told him.

Attachment U

What we ended up doing was having to interview Wayne and Clay as witnesses because their names came up from the complainant. I believe the complainants got disciplinary action for the secret tape recording.

Are there any other issues affecting credibility or relating to compliance with law/policy?

One investigator had to wait two years to get a certification. *(John Strandell joined us and provided the following account):* [REDACTED] was trying to get an advanced certificate. Prior to DCI, he was at Gambling Control, and wasn't able to get a response from Wayne, so I said that I'd get on it. Years had elapsed, so it was pretty frustrating for [REDACTED]. His previous bureau chief, Jeff Bryson had also tried to get it. I called Wayne and he apologized for, admitted he should have done it previously, and got it done.

(John left and I resumed the interview with Mike)

Tell me about the legislation issues.

I follow the Law and Justice Committee and what they are doing. Ali Bovington and I were asked to be present at a meeting. Senator Jim Shockley had concerns regarding Lake County, and that was when I first learned that POST was there to present proposed legislation regarding criminal justice agency designation and peace officer status. They were followed by us and by FWP regarding Lake County. I want to say that there was a draft of the proposed legislation provided, but cannot remember for sure.

I don't go and testify before the legislature on legislative proposals until I get the ok from the Attorney General or the Chief of Staff. My sense of this is that it was a direct communication with Wayne.

Later came the POST proposal to take over the Montana Law Enforcement Academy (MLEA). Law enforcement was getting frustrated with POST not returning phone calls and not being in the office. I got a note from the Colonel of the Montana Highway Patrol, that he just had this draft bill presented to him and run by him to see what he thought by Clay Coker. I learned about it through the Patrol.

A week later, I put in a call to Winnie and she said she didn't know anything about it, and that she was out of town, so I set up a meeting with her. It was actually a bill draft in the bill draft format.

Kevin Olson was frustrated. He tried really hard to help out POST. Kevin never got an apology, then got an email from Wayne saying that putting together legislative proposals was in his job description. After the meeting, Clay said, "things are not as they appear." Winnie said that it was a personnel issue, and that they dealt with it as a disciplinary action with Clay. I never got any follow-up on the issue from POST.

What do you know about the issue with the Montana Roughnecks and its impact on POST credibility?

All I know is, the FBI national academy, which includes a lot of local folks had a retainer in Billings and the instructor from California was talking about outlaw motorcycle groups and said that one of his biggest frustrations is when law enforcement officers try to emulate them. That's when I heard about it. Mark Muir has the pictures. Clay taught ethics at the academy, and said that they were the ethics police [so this could impact credibility].

What do you see as the positives with the POST Council?

Attachment U

It is an important function. They have a good group of people on the Council with a good background to help make decisions on what is needed for basic training and for corrections. There are good subject matter experts. They also have the expertise and common sense to direct staff on investigations.

I don't think these administratively-attached things work well in state government. The governing councils don't get a first-hand view of what is happening on a daily basis.

What do you see as strengths with Wayne?

Before all of this, I've always known him to be a very nice person. I also hear that he is a good trainer. I don't have a lot of one-on-one interaction with him, but in hindsight, I don't know if he has the background to do this job. He worked in the food service at the Prison, then was a trainer, then got this job at POST. I've also observed that Wayne can be immature, professionally immature, and it was really clear in that tape in Polson – he was laughing at the interviewees, and I've seen him in past Council meetings do things like that.

What actions do you think can be taken to improve communication, rebuild trust, and improve organizational effectiveness?

With Wayne at the helm? I don't think he's the guy for the job. I would love to say otherwise, but don't think he has enough management experience. He doesn't understand the sensitivity of this profession and how you go about collecting information. If there was a different structure in place, if you had a seasoned manager he reported to, maybe, but one thing about this profession is that cops don't forgive and forget. It would be hard for him to have credibility or trust. Someone like [REDACTED] would have been good in the job, but he couldn't work for those wages.

What do you see as the ideal outcome of this fact-finding and evaluation process?

They need a director with more management experience and insight into this business. They need to establish trust and working relationships with administrators in law enforcement and corrections. They also need to look at the governance structure.

Don't take this the wrong way, but I understand why someone would draft a bill to put MLEA under POST. It would not have worked with the current staff, but if it were the other way around (i.e., POST under MLEA, or the entire structure under Kevin Olson's leadership) it would work. They could have POST temporarily report to Kevin Olson until they can work on the governance structure.

POST – Public Safety Officer Standards & Training Council
Organizational and Individual Workplace Performance Fact-Finding Interviews
October 2012

Name: Tana Meuer 406-444-9975 tmeuer@mt.gov	Title: POST Executive Assistant	Date/Time: 10/3/12 11:45 a.m.
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I'd like to review some of the issues raised at the August 15th meeting. Please describe the situation with the data entry in relation to some of the complaints regarding training information not being updated.

We're all caught up now. It's kind of a pattern, and we get concerns every year about this time. I think it is because the end of the fiscal year is June, so a lot of the agencies are doing their training before the end of the year, so we get inundated in July, August, and September with training updates. I am the only one that does data entry, and I enter data when I can get to it. Another issue that affects training updates are agencies that pay for certification. If an agency pays for certifications, someone's transcript isn't relevant until it is time for the pay adjustments, then they would like it done right away. I do not think that keeping track of training for agencies is one of our statutory duties, but it is a perk we provide to agencies.

Has POST made any efforts to improve the database to expedite updates?

We sat on hold because it was not a priority for IT. I've been here four years, and we've been through five different programmers in that time, so we make do with what we have. If we could get our own programmer, we could get it done. I don't know if it is a budget thing or if we have to stay with state IT. Wayne told me someone could come do it, but that it was a budget thing.

We do a lot of manual work now in the old database that could be eliminated if it were improved.

When POST was under the Montana Board of Crime Control, they had about nine people doing data entry. I was working at the academy, and I did some of the data entry too.

The temporary has been here since August 6th and got us all caught up.

How about the complaint regarding the lack of returned calls or someone answering?

We were trying to deal with this as well. We all have two lines. If Wayne or Clay get a call and are on their line, they can press 0 and it will come to me. We looked into an answering service if we are in a meeting or have to leave the office. I can walk down the hall to pull a file and get right back to my desk and have two messages.

Who do you normally go to if you have questions about your job?

Wayne. Clay and I do a lot together too as far as agencies such as hire slips, so if Wayne is busy, I can go to Clay.

Wayne was here about a year in advance of me. He held the fort down and created a PD for me and we built a foundation from the Montana Board of Crime Control.

Describe Wayne's availability/accessibility over the years.

It's been great. I've always had good guidance, and he's been a good leader. His availability diminished a bit with the loss of his mother. All of us would brief in the morning and stay on top of what was going on.

Please describe your observations of Wayne's interaction with the Council

This last meeting, I type minutes and go back and listen and fill in the blanks. This meeting caught my attention more than anything before – the Council was looking for more detail. Wayne Ternes has been wanting for guidance. I don't know if he is getting guidance, but he is looking for it. At the last meeting, there were more directed questions.

How about his interaction with the Council Chair?

Winnie was probably kept up to speed more. From my personal view, I didn't see a lot of action by the committees. Winnie stayed apprised of issues, they had good communication and she was apprised of what was going on.

We'd send out information ahead of time to the Council and rarely would we get responses. The Council wouldn't respond, so we'd just go ahead as best we could.

Do you know if the Council was aware Wayne would be presenting the bills for criminal justice and peace officer status to the legislature?

I don't know due to the Council's response. I do know he was invited to go, and he did tell the Council he was invited to go up.

Anything else?

The data entry has been an ongoing issue, so this complaint doesn't bother me, but it seems to have escalated because of what is going on, because of the other issue.

What do you mean by the other issue?

The concerns that were expressed at the meeting on August 15th. I heard that the biggest concern was communication and the lack of trust between the field and the office. A lack of trust, a lack of communication and administrators not knowing of things in advance. My opinion is, trust goes both ways. We are an office that does a job. Clay and Wayne are ethical people who do things right. I'm not involved in the investigations, but I understand that they [agencies] handle it administratively, and we handle it ethically.

Can you describe POST's efforts to communicate with agencies?

As far as investigations go, Clay Coker has done an outstanding job remedying the concerns regarding notifications, cc's and emails, and I don't know how it was done before, but with the concerns that were expressed, there has been a greater initiative in this area.

I always thought Wayne was doing a good job until this went down.

Do you know why these efforts to communicate weren't initiated sooner?

I don't know, and I don't know why he was suspended. Why couldn't he have had his hand slapped?

Wayne had the temp lined up before he left, and she is doing good.

Attachment V

What has been the biggest deficiency in operations since Wayne left?

I don't know. Other than there are only two people holding down the fort. Clay has been in these types of positions before, so he can pick it up, but he has another position too. Clay Coker seems to be doing a good job and has a comfort zone. We had a budget document come out, and it was a good education.

It's a bum deal, the whole situation, but if there are major issues, hopefully he [Wayne] resolves it and he can come back. I think we're a pretty good team.

What do you see as the ideal outcomes or the appropriate next steps for this review?

I think that the trust issue is the biggest concern, so communication is the biggest issue. The flow chart was huge in improving communications, and this was guidance from the Council. Part of the problem has been a lack of guidance, and with more of that, maybe we wouldn't have had these issues

I don't think that Wayne stepped outside policy or rule and did a pretty good job, and I think we've done a pretty good job keeping things afloat while he was gone. What we've been doing in his absence can guide how things will run in the future.

POST – Public Safety Officer Standards & Training Council
Organizational and Individual Workplace Performance Fact-Finding Interviews
September 2012

Name: Sheriff Vern Burdick 622-5451 sheriff1@mtintouch.net	Title: Sheriff, Choteau County President, Montana Sheriff's and Peace Officers Association	Date/Time: 9/12/12; 9:50a
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Please describe how your responsibilities both as Sheriff and as President of MSPOA relate to the POST Council and its staff.

I am President of MSPOA for a year term, and will be replaced in June 2013. My interaction with POST, what precipitated the face-to-face meeting [on August 14, 2012], is that over the last few years, there has been a culmination of concerns from sheriffs across the state, and the patterns of concerns were the same. Issues being brought before Wayne Ternes were not being handled or were not being handled in a timely manner. There are concerns with the Director's lack of doing the job in a timely manner. There were multiple instances reported by sheriffs that were similar to an incident with one of my own deputies.

I know there was a lot of catch-up when there was previously an interim director, but the previous POST Director had a lot cleaned up, and this catch up has been an excuse for several years. There are concerns not only with the certification issue, but also with tracking of training – the tracking and compiling of training records.

With one of my situations, it took almost two years to decertify a deputy who left the country. This occurred in late 2005. One of our deputies had been involved in a Partner/Family Member Assault with his wife. She came in and there was clear evidence of the assault, then he directly left the state and went to New York. There was also an investigation from the State Department. He hosted a foreign exchange student, and they were looking into allegations of sexual contact with the foreign exchange student. After we got the warrant issued, I sent all the information to POST in hard copy [for decertification or suspension of certification purposes]. Then, at least once every month or every two months, I would leave phone messages asking the status, and I was checking the website and would see this deputy was still active. After two years, I caught Wayne Ternes face-to-face and said that he needed to deal with this situation. I said that we need to suspend this certification, and that it is taking too long. It was happenchance that I came face-to-face with him. He never returned my phone calls or emails. I told him to look at the ARM and that they can suspend him based on what information we have now pending a hearing. He did get back to me about two weeks later – I happened to run into him face-to-face again, and he said, he looked into it, and we could do that. Sometime after that I looked on the website and the certification was suspended pending a hearing. This was 2007 and we had started the process in 2005. This rings with other issues that were brought to MSPOA.

Some of the more egregious issues were related to what took place in Lake County, but we weren't allowed to speak about those issues openly during the [8/14/12] meeting. Mike Batista can speak to these issues.

The majority of our issues relate to them not concentrating on doing the job and not getting back to sheriffs about the status of issues.

Attachment W

There were a couple of deputies in my office that had issues with not getting their training tracked, but I would have to check with them to find out the specifics.

Who should I talk to for additional examples of concerns from Sheriffs?

You should talk to:

Chris Hoffman, Ravalli County

Glenn Meyer, Valley County

Brian Gootkin, Gallatin County

Leo Dutton, Lewis and Clark County

Are there any other major issues or concerns in addition to the lack of timeliness on certification issues, failure to return phone calls or emails, failure to accurately track training, and the issues in Lake County? Any concerns of violation of policy or law?

There were some other concerns regarding ethics and potential breaches of ARM. You will want to talk to Mark Muir, Missoula Police Chief, and Jerry Williams, regarding this. You will also want to talk to the head of the Montana Law Enforcement Academy, Kevin Olson.

What strengths or weaknesses do you see with the POST Council – its governance structure, its ability to manage staff, etcetera?

Pre-Ternes, POST was not a quasi-judicial board, and it is not the fault of the POST Council, but when it was realigned under the quasi-judicial board, there were issues raised as to whether they could hear information about cases, then later rule on certification.

They've been excluded for six years, and I don't think they knew about their role in supervising staff. Before the quasi-judicial designation, they worked well and the POST Council knew what the staff were doing. As a Council, they need to be apprised as to what is coming in, and make a decision rather than being left to make decisions based only on information provided by the Executive Director and the Chair. They need to get back to where they were before they became a quasi-judicial board. Take the veil away so they can do oversee operations.

They have been hampered in their ability to make decisions regarding decertification. This was recommending during the face-to-face. We understand the ex parte issues. There are a number of folks that sit on the Council, and a subcommittee of three could work with the Director to help make decisions regarding cases – to help separate out and weed through information from the POST Director.

They have also been hampered in their ability to monitor day-to-day staff performance. Through a change of leadership on the POST Council and with the Executive Director, issues will be caught up. The POST Council had no realization it was their responsibility to ensure that the staff were performing up to specifications.

Tony Harbaugh and Dennis McCave can better tell you how the POST Council was kept in the dark.

What are the strengths or opportunities you see with Director Ternes?

Wayne Ternes has so damaged trust, and the performance issues have went before the whole state, so I don't think Wayne Ternes will be an asset to the POST Council or be trusted from this point forward. For me personally, there would be no effectiveness if Wayne Ternes is still allowed to be the POST Director.

Attachment W

What do you see as the ideal outcomes of this process?

So far, the steps taken since the face-to-face meeting are a huge leap forward in the right direction. I understand there is a new interim chair that Wayne Ternes is on administrative leave, that Clay Coker is the acting director. Just based on the POST Council decisions since August 14th, it is clear that they know there is an issue, and I trust them to do the right thing.

There is a secretary at the POST Council, so there is no reason that issues should be lost or phone calls not returned. There is a secretary that should be there from 8 – 5 Monday – Friday, a Director, and a Compliance Officer, so at the very least, phone calls should be answered. People have called a number of times for the office at the POST Council and without fail, they get an answering machine and their calls are not returned. There are many times when the answering machine is full so you can't even leave a message.

You mentioned that you feel trust with Wayne Ternes is broken beyond repair. Where do you feel things are at with Clay Coker?

From what I can see, it [POST] needs to be started with a clean slate. Due to the questioning on 8/15 and on other issues, I don't think the way he answered the questions supported trust. He was defensive, evasive on some issues, and potentially not honest. Not personally with me, but when I have seen him in situations where he is getting questions, I sense he is responding this way whether it is on his own or at the Director's direction.

Muir and Williams are people who may have personally witnessed him [Clay Coker] not being truthful.

It also sounds like there may be potential performance or attendance issues with the secretary?

Kathy McGowan, our MSPOA representative out of Helena, on multiple occasions, has tried to contact the secretary during work hours, and has never gotten a hold of her. Kathy works at Smith McGowan 443-5669.

POST – Public Safety Officer Standards & Training Council
Organizational and Individual Workplace Performance Fact-Finding Interviews
August /September 2012

Name: Kevin Olson	Title: MLEA Administrator	Date/Time: 8/31/12; 1:30p
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I. Opening remarks:

- Protection from retaliation for participation
- Requirement for truthful responses/avoid speculation (avoid liable/slander)
- Confidentiality vs. need-to-know; right to privacy; requirement to report any findings of violation of policy.
- Requirement/instruction to not discuss this with anyone else.
- Anticipated next steps/outcomes

II. Background

Describe the relationship and interaction with POST and MLEA

The role of the MLEA is defined in Title 44, Chapter 10 (*Kevin provided a copy of the applicable law, which is included in the binder*). The MLEA is a part of the Department of Justice, and the ultimate responsible party is the Attorney General. The MLEA has fluctuated between being a division and a bureau, and is currently a bureau within the Division of Criminal Investigation (DCI), and I report to Mike Batista. We use DCI for clerical support such as processing claims and payroll.

POST is an accreditation and certification/decertification agency. They certify or decertify law enforcement officer, and accredit certain types of training. There are two distinct phases of training, 1) basic training that all law enforcement officers are required to attend to maintain employment, and 2) professional development training – continuing education. It is not required but is recommended.

POST does not do an in-depth review of the Professional Development Program. POST looks at a training program and says, yes, we will certify this training if appropriate. In Montana, the relationship between POST and MLEA is somewhat unique in that they are different houses. For example, in California, there are 47 law enforcement academies which are overseen by POST.

Please describe the POST Director's role in overseeing or delivering training. The Job Profile has a section in there about training.

There is a section in law that says that the POST Council is responsible for conducting basic and advanced Coroner training. Also, in MCA part 44-4-403, POST has the ability, by law to bring in certain training. They will post it, and people will come. Professional development training is not always hosted by MLEA. Sometimes the Helena PD or the Missoula PD will do continuing education. There was a recent offering of memory enhancement skills for law enforcement officers, and we didn't have the money to fund it, so POST put it on.

In state law, it specifically says POST is responsible for training county coroner's, it's been on the books for 15 years, and POST didn't have the facility or the knowledge to do it, so MLEA did

it. Over the last three years, POST has been working on a lesson plan for a one-week coroner course and I've been pushing for the lesson plan. At the last POST meeting, Wayne said they will put it on, so 2012 will be the first year MLEA hasn't done it.

Describe your history and professional relationship with the POST Council and Wayne Ternis.

In 2004, MLEA was on hard times, and the current administrator wasn't taking MLEA in a direction that law enforcement was pleased with. After about a year of this, I was the Police Chief in Havre at the time, McGrath posted the position and hired me.

The relationship with MLEA and law enforcement was fractured at the time, and this included relationships with the POST Council. The former MLEA administrator had a seat on the POST Council, and at the first meeting, I told them I didn't want a seat on the Council as I felt this represented a conflict of interest. Even though we are not required to listen to POST, I saw the value in this relationship with Alan Horstfall when he was the director of POST, and worked well with him and things were going well.

The catalyst that broke POST from the Montana Board of Crime Control (MBCC) was the physical fitness standard – should there be a POST physical fitness standard. MLEA had a standard which I changed as I thought it was unfair. I took the Cooper standard, which was age and gender adjusted, and modified it.

At the same time, Schweitzer was elected and downsized the POST from 18 to 11 members and reminded the POST council that they are advisory only, and that MBCC was the final authority, so POST and the law enforcement community came up with SB273 – the policy, county attorneys, sheriffs, etc.

Mike Batista took the lead on the legislation. The fiscal note was flawed. The MBCC said that they only used \$80K to administer POST instead of \$160K because they did not want their budget gutted by \$160K. SB 273 went through, but they only funded it with \$80K, so DOJ picked up the rest. From July to November was the ramp up, and the law took effect in January.

I brokered a deal with Motor Carrier Services to borrow Alan Horstfall to run POST for three months as the interim director until the POST director was filled.

The POST had an interview panel that consisted of Winnie Ore, John Standall, Alan Horstfall, and Mike Anderson. The panel hired Wayne Ternis as the Director in the spring of 2008. Mike Batista was out of state at the time, so he directed me to make the job offer.

How did things go between 2008 and when POST put forward the legislative proposal to oversee MLEA?

The first couple of years, Wayne eked by. We hired him a clerical temporary for 90 days and Wayne and I worked well together. I noticed the stance of staff and the council was not the in-depth level of communication Alan Horstfall and I had become accustomed to, and that there was a distinct division between MLEA and POST.

POST went to the 2009 session to get additional funding and a compliance officer to provide technical assistance and to do investigations. They thought the primary focus was compliance, and to provide an investigation function.

Attachment X

Prior to this, POST had worked hand-in-hand with agencies to conduct investigations. There was involvement by the law enforcement agency and the POST council in the investigation. They brought Clay Coker, who was the former Chief in Libby in as the Compliance Specialist/Investigator.

As things progressed, I was not in the loop and didn't see anything on the horizon as far as an adversarial relationship.

Last September 2011, I attended an FBI training academy in Billings with the police chiefs and sheriffs from around the state. In one of the trainings, **Jorge - [REDACTED]**, who is an intelligence analyst for the Western States Information Network and a specialist on outlaw motorcycle gangs, and had a seg-way into law enforcement motorcycle clubs. He said they were walking a fine line because they were engaging in behavior similar to criminals and behaving like a motorcycle gang.

In making his point, he referenced one of these gangs in Montana, and put up a picture of Jim Smith and Clay Coker, and the whole room gasped. During the break, at least 30 officers came up and downloaded the pictures onto their thumb drivers. They even had a website for the Montana Roughnecks.

This presented an ethics problem. One staff member came up and asked about it. Another staff member [Larry Adorney] asked Wayne directly what he was going to do about Clay's motorcycle club and Wayne launched into a tirade against this employee. Wayne later came back to [REDACTED] and apologized and said that it was unfortunate and needed to be dealt with.

About 3 – 4 weeks after that, Mike Batista (around May) Mike Batista emailed me the legislation about POST taking over MLEA.

Mike Anderson and Steve Barry were on the POST committee looking at proposed legislation. There were three things missing from the list, 1) POST taking over the academy, 2) POST getting Criminal Justice information or status as a criminal justice agency, and 3) Clay becoming a peace officer.

If Steve or Mike would have called, it would have been OK, and Wayne or Clay didn't say anything. We found out the proposal was send from Clay to Alex Betts, who took it to the Colonel (of the Highway Patrol), who forwarded it to Batista. It wasn't part of the POST legislative review process. Within a week, we were getting phone calls from administrators around the state.

Mike Batista called Winnie Ore and asked for a meeting, and Winnie didn't know that this went out. Mike sent her a copy of the proposal and he met with her and she said it is a dead issue and is going nowhere, that it is not a POST initiatives. A couple of days later, I got **an email from Wayne who said it was an unauthorized distribution from Clay Coker** and that it has been dealt with as a disciplinary matter, but the email also had words to the effect that we have to remember drafting legislative proposals is in his job description. Since this went out in early June, I have not spoken to Wayne or Clay other than to say hi.

In the meantime, the Lake County thing was going on – you can **look in the Missoulian today** for an update. This was also discussed in the **April Post Council minutes** Wayne Ternes told POST he was asked to attended a Law & Justice Interim committee meeting regarding Lake County.

Attachment X

Shockley asked how we could be more responsive and Wayne said that we needed to designate POST as a law enforcement agency. Dennis McCave was at the meeting and picked up a packet which included the draft legislation.

In June, there was a conference in Great Falls. The Sheriff and Peace Officers Association, MACOP, the Police Protective Association, etc. Chief Muir announced that he was convening a meeting to discuss POST concerns and the meeting turned out to include about 85 people. Clay was in attendance. Muir had invited Winnie Ore and she declined the request. The June meeting turned hostile and people asked Clay directly about his conduct. I felt bad for him. Winnie agreed to an 8/14 Listening Session and Steve Barry took notes.

Let me back up a bit. At the end of July, POST had a conference call with the new attorney, Sarah Hart, and talked about a confidential memo she had sent and she said it was confidential based on attorney/client privilege. and that she wanted to put on a four-hour training on process and procedure. Jerry Williams asked Chair Ore if he could have a copy of the memo and he was told no. Jerry asked if the training was an open meeting and he was told no. I cringed when I heard this because I knew it was inappropriate. Mark Murphy, who is an attorney, was on the phone too. Mark Murphy was directed to file a suit to get the memo, and delivered it to the AG office for review. Someone in the AG's office gave the edict that the memo would be released and that that training would be open, so the suit didn't have to go forward.

On Tuesday, Chris Tweeten did a good job talking about ex parte communication and other procedures. There was nothing in the memo or training that needed to be kept confidential.

On Wednesday, it was hostile. There was lots of dialogue with the audience, and Tim Fox and Shockley were there.

What are the strengths you see with Director Ternes?

He is compassionate, a joy to be around, is funny, and has a big heart.

What actions do you think can be taken to improve communication, rebuild trust, and improve organizational effectiveness?

With the Council itself, I have the utmost respect. Individuals like Steve Barry, Hal Harper, John Schafer, etc. There is no issue between the academy and the Council. The issue is between the academy and the POST staff. There is a severe lack of trust.

At the end of the meeting, I shook Clay's hand and said, "I wish you the best." He pulled me in close and said into my ear, "not all things are as they seem to be."

The email [regarding the proposed legislation] was from Clay's email account, but there was always a suspicion that it was Wayne's idea. I don't believe Clay would distribute proposed legislation without Wayne knowing about it.

I will never be able to trust Wayne Ternes again. I've seen his position on issues change on a regular basis, and it appears the either he doesn't know and is winging it on a response, or that he is not being truthful.

What if we were to have a "clearing of the air" with Wayne?

If there was a clearing of the air with Wayne, I would still be on guard and would reduce my communication with him to writing.

Attachment X

In the bigger scheme, Wayne doesn't have to have a relationship with the MLEA, and I would be more concerned with the POST staff's relationships with the stakeholders than with the MLEA.

██████████ refused to go to POST Council meetings because he felt he didn't need to listen to them. You can agree to disagree, but it seems like Wayne doesn't get it. Wayne once said to me that Doug Chase is incompetent. Just because you disagree with or don't like someone, it doesn't make it ok to make those types of statements.

The photos of Clay seem to represent conduct unbecoming an officer, and will surface as a credibility issue if they accuse an officer of conduct unbecoming.

There are two main issues still hanging out there, 1) criminal justice agency status for POST, and 2) Peace Officer status for Clay. I was talking with a group of law enforcement officials and asked, if this had been Alan requesting this, would you have a problem with it, and they responded no, but that they do have a problem with it now because they do not trust Wayne and Clay.

Can you please provide the names of other individuals you think I should talk to?

POST Council Members

Jerry Williams

Vern Burdick

Mark Muir

Undersheriff Perry Johnson (Ravalli)

Sheriff Chris Hoffman (Ravalli)

Brian Gootkin (Gallatin County)

What do you see as the ideal outcome of this fact-finding and evaluation process?

I knew someone would ask this question. I just found out that Wayne was placed on administrative leave. As I think about this, I don't know what all the allegations are. Based on what I know and told you, it is shaky ground for a terminable offense. I don't think that what happened with me is a terminable offense, but he has a tremendous credibility problem, and know you can't operate in that position without credibility. It is hard for people in law enforcement to forgive and forget, but I would hate to see him terminated. It seems like the only solution would be to bring in a new Executive Director who could give marching orders to Wayne and Clay.

Do you know anything about the issue raised by Chief Muir that there are widespread concerns that training hours are not being recorded properly?

There have been a number of times we have gotten calls from the field about this. I remember Tim Shanks from Great Falls had called and wanted to know why training hadn't been entered into the database.

POST – Public Safety Officer Standards & Training Council
Organizational and Individual Workplace Performance Fact-Finding Interviews
September 2012

Name: Winnie Ore	Title: Former POST Council Chair	Date/Time: 9/5/12; 1:30p
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I. Opening remarks:

- *Protection from retaliation for participation*
- *Requirement for truthful responses/avoid speculation (avoid liable/slander)*
- *Confidentiality vs. need-to-know; right to privacy; requirement to report any findings of violation of policy.*
- *Requirement/instruction to not discuss this with anyone else.*
- *Anticipated next steps/outcomes*

Please describe your background with POST and Director Ternes.

I have been on the Council since the Racicot administration, and the Council has changed quite a bit in the course of this. The POST Council was an advisory board of the Montana Board of Crime Control (MBCC) and everything went to the MBCC as a seconded motion.

About five years ago [SB 273 eff. July 1, 2007] the Council changed and is now a quasi-judicial board, which changed the role of POST. So, instead of sending issues to the MBCC, we have to hold hearings and make the final decision.

Judy Martz re-appointed me to the Council. Then Brian Schweitzer came on board and re-appointed me and appointed me as the Chair. He did things differently than other Governors, who typically relied on recommendations from stakeholders, and Governor Schweitzer wanted me to stay on, and designated who would be the Chair.

I was on as Chair until I resigned. I was going to resign last December [2011], but decided there was too much going on and that it wouldn't be fair to leave then. Then at the last POST Council meeting, I resigned.

Since the change to the quasi-judicial board, we've been feeling our way along. You would ask five different attorneys the same question and would get five different answers. There was not a lot of forethought on the part of the Legislature, they just said that now we are a quasi-judicial board and did not transfer any staff. About the same time, around August, the current POST Director, Alan Horstfall, resigned and went to work at MDT. Before Alan was Jim Oberhoffer.

The POST Council did not have our own attorney - we had the use of an attorney from the Montana Law Enforcement Academy (MLEA), but the quasi-judicial status and Montana Administrative Procedure Act (MAPA) was different terrain.

Deb Butler was the attorney for the Council at the time and worked closely with Wayne Ternes.

Please tell me about the hiring of Wayne Ternes.

It was in late 2007. We convened a hiring board when Alan Horstfall retired. It included Alan Horstfall, Deb Butler, Kevin Olson, Mike Anderson, and someone from MSPOA.

Attachment Y

The usual hiring process took place. Had I been experienced in what it means to be a quasi-judicial board versus an advisory board, we would have done it differently – the Council would have weighed in on the final decision. Deb Butler and Alan felt that Wayne blew the interview out of the water. Alan and Kevin Olson made the offer of hire. I knew Wayne from Corrections, so I felt comfortable with the selection and stayed on as chair.

In 2009/2010, Deb quit the job at MLEA and moved under the Attorney General as legal counsel for the Department of Justice, and was no longer on loan to POST in the same way. There started to present a tug and pull with other cases. Deb had less opportunity, but still did a good job. In July 2011, Deb resigned from the Attorney General and went to the Legislative Audit Division, which began a struggle as we didn't have the budget for an attorney. We asked Bob McCarthy to pinch-hit as our attorney and he said sure.

We were grossly underfunded. There were thousands of courses a year, and complaints that must be pursued. The first two years of change were tough 2007 – 2009. Alan and Jim had a staff, whereas Wayne didn't

Wayne got hired and plunked in and inherited boxes. MBCC said they didn't have room for POST, but thankfully, MLEA did. Wayne Ternes was hired and was handed a hundred boxes of stuff, and it took him a year to get someone hired and to get through the boxes.

Being understaffed, I said to the Post Council, we've always had a Curriculum Committee, but now need to be more active. We need our Curriculum Committee, Policies and Procedures, and Professionalism and Integrity Committees to be more proactive. The only committee that was worth its salt was the Curriculum Committee. Dennis McCave is a jail commander in Yellowstone County. The Policy Committee made you want to pull your hair out. They promised to meet and would not. Bonnie Wall was in poor health and passed away. The policies languished.

Wayne was bouncing a lot of balls, so the policy became secondary.

Greg Watson from the Montana Highway Patrol said he'd take it. Wayne began to write resolutions. The Committee still languished. Greg became Captain and had less time, and then Alex Betts took it. The Policy Committee never wrote one policy.

The Professionalism and Integrity Committee has struggled. They have done little things, but not what one would have expected.

The Business Plan Committee – Steve Barry is a champ, and he and I and Wayne put one together [a business plan].

For the last two years, I haven't given the Council one-eighth of what I should have or what they needed. I've been out of state and too busy.

Another problem is people won't bring problems to the Council such as MPPA, MSPO, and the Chiefs. One Chief will represent all the Chiefs, and one Sheriff will represent all the Sheriffs.

At the end of things, we all went around and said, what are you hearing out there, and there was really no feedback about the concerns. People would not say there were problems. Dennis McCave would bring concerns, but he was caustic.

Attachment Y

A piece of being a quasi-judicial board, is that under the old way [advisory board] a lot of stuff happened in an informal way. Under a quasi-judicial board, Council members cannot hear information surrounding an issue, they have to hear facts from a hearing officer, and if they do hear about an issue, they have to recuse themselves from the case.'

The Council doesn't like this, but every attorney has said the same thing, you can't hear information about a case. Deb Butler, Clyde Peterson, Sarah Hart, and Chris Tweeden.

They wanted to have a screening panel which would require a change to the Administrative Rules, and they would not be able to vote on the Hearing Officer's decision. The old process wasn't really fair to the complainant or the defendant and they needed to be more neutral. Complainants may fear law enforcement, and they needed to know they had a place to go.

Alan Horstfall, Deb Butler, Greg Hintz, Bonnie Wall and I began to write Administrative Rules and were visionary in looking at the MAPA thing.

The process under Alan was that he would review it and if there was something there, refer back to the administrative rules. ARM brought about a good road map so the policy was not quite as critical.

Was it clear with the POST Council that it wasn't Wayne's job to do policy, curricula, ethics, etcetera?

They knew full good and well, and there were times when the Council did not do their job.

For example, the Corrections issue with firearms and the Brady Act. Wayne brought a proposal forward and the Council argued over it and discussed it. At the same time Montana State Prison said they did not have to do as much training regarding firearms. I asked Greg Watson to look at the issues, to look at other states, and to come to the next meeting with recommendations. The next meeting rolled around and MSP and the Union were there, and I asked Greg about the recommendation from the Policy Committee and Greg apologized and said that he didn't have the time to do it. Everyone knew the Policy Committee failed to rise to the occasion. Dennis [McCave] would say that it is Wayne's job to write policy, but the Council did not deliver.

Finally, we told Wayne, about six months ago, to just write a policy on the complaint process and bring it to the Council. The Council reacted as if he had done something subversive and then approved it as a temporary policy for six months

I believe, in the late summer of 2011 [will confirm date and MSOP Chair], about a year ago, I got a letter from the MSOP chair with a complaint that Wayne had used state time to go to the Special Olympics in LA. The complaint wasn't accurate, so I responded with the facts and didn't really hear any more.

In May 2012, we got a letter from Mark Muir and Blue Corneliusen. They wanted me to come to an MSPOA meeting and hear concerns. I thought they should talk to the full council if this is a big deal, and responded with a thanks but no thanks, and offered for the Council to set aside a full day, and then began a correspondence via email.

I talked to John Schaffer, on the Council and MPPA and he told me we need a full day, it is bigger than this. No one had said anything before. He laid out a lot, but a lot of it was innuendo. He said they don't trust Wayne and I asked for specifics.

Attachment Y

When Wayne took over, he was serving as an expert witness on a case against a cop. Wayne went to Attorney General McGrath, and he told him he could not take pay, but could go and talk about the standards. Wayne also talked to the Governor's office I believe it was Patti Keebler, and they said to go forward, but he didn't bring it to the Council.

Wayne Ternes' testimony had no impact. The law enforcement officer was exonerated [Wayne was a witness for the plaintiff]. John Schafer said that it started there, and that they didn't trust him.

The reality is, if there is no trust, there is no ability to do that job.

Around the same time, April or May, I got a call from Mike Batista who had concerns and they were very alarming. What caused Batista to call was a draft piece of legislation that he said had gone to Alex Betts, a draft for MLEA to come under the POST Council. (attached).

Wayne's mom passed away, and he was having medical issues and out on leave, and I did not want to bother him while he was on medical leave, so I asked staff. Clay Coker told me he gave it to Betts. Mike had other concerns related to accountability for state time and taking state cars home.

When Wayne came back, he told me he would check with staff and there was a policy that staff was not to send out any documents without his approval. Wayne Ternes also explained his use of the state car, and I said, what about Clay, and I advised Wayne to look at the Montana Operations Manual regarding this.

The draft legislative piece that circulated was a catalyst that lit the fire for MSPOA and MACOP. Wayne tells me he didn't know about it, and I told Wayne he needed to give Clay a verbal warning. Then Wayne sent out a bad email and justified it before giving people a solution and told people it had been handled.

Mark Muir sent in advance [of the August meeting] a letter covering the issues and did a good job.

Were you apprised of the issues in Lake County?

Lake County has been brewing for two years. It goes back to Alan Horstfall and there have been issues there for a long time. I was very aware of Lake County, but remember that the Council's job is to look at things that are not just criminal, but ethics [and other issues that may affect certification] too.

Were you apprised of any alleged inappropriate conduct on Wayne or Clay's part regarding Lake County?

I did not listen to the interview that was tape recorded, and Mike wanted to know if I heard it, and I said that I can't muck around in that.

Do I have concerns? Yes and no. I trust the MAPA process, and Mike McCarter is a good hearing officer and will sort through the findings of fact and not muck up the quasi-judicial process. The more people that protest looking at something, the more inclined I am to think we need to look at it.

Attachment Y

Bob McCarthy said he would pitch-hit when we had cases out of Lake County and Libby, so he took the files and then dropped off the face of the earth. I reached him two times regarding the status of the cases/files and he gave me the Butte shuffle. The first time, he had grandkids and couldn't talk and said he would call me back and never did. The second time he was calling bingo or something. Wayne finally called and said he needed the files back and that Chris Tweeten was now on the issue.

We addressed every item in Mark Muir's letter. I will bring you a packet with our responses to the issues in his letter.

Do you know about the problem with the Reserve Officer and Part-Time Officer training?

In statute, this training is the responsibility of the local jurisdiction. Part of the request to the Council was to write the curriculum, but this is more of a challenge than you would think due to the diverse needs of the different jurisdictions. The reserve officers are "volunteers," but they get paid. The Post Council decided not to certify reserve officers because we had no idea of what type of training they had been provided.

The whole day is recorded and is available online.

Please tell me about Wayne's performance appraisal.

When you don't have daily control, it is hard to be in an oversight role - when you don't really have daily oversight. I relied on Steve Barry who told me to get a hold of [REDACTED] and work up a performance mechanism for the Executive Director. Wayne and I went through the PD and had the business plan and got stuff ready and talked through stuff. Before, there had been no PA's done on Wayne at all. Wayne worked with [REDACTED]. My original thought was that the full council needs to weigh in, but I was resigning, so I told Wayne I would give him my thoughts.

It [the performance appraisal process] wasn't what it should be by any means. It was a shock on the second day of the meeting when I asked him to provide an update on what he was doing in relation to the business plan to find out nothing was happening. I had told Wayne I wanted an action plan and that he could talk about where things were at. Wayne did a very poor job. When he brought it to the Council, it was beyond an inferior product, and it really affirmed that the concerns that had been brought up were valid. It was proof that he had not been doing the job as he had indicated to me.

The next Council Chair should have the goals in hand at every meeting.

Did Wayne every get any written guidance from [REDACTED] on the process for a board evaluating an Executive Director?

I am not sure. [need to check on this]

The fall down was that I didn't get information, until the meeting, that Wayne had let the balls drop.

Please describe any strengths or weaknesses you see with the POST Council.

It is, being a quasi-judicial board, is imperative and the direction is laid out and is the right direction. The ARMs do need to be looked at again – it should happen at lease every four years anyway. The growth is going in the right direction, and there are some very solid members. There are some problems, such as Bob McCarthy. It is difficult to resolve Council issues under the current administration. It is difficult to go to the Governor. [REDACTED]

[REDACTED] His term is up in January. It seems like sometimes Council members don't care.

What strengths do you see with Wayne?

He is committed to whatever he does, sometimes to a fault – maybe he gets blinded. He works hard and has passion.

What actions do you think can be taken to improve communication, rebuild trust, and improve organizational effectiveness?

He can't come back. I care about Wayne as a human being, and I care about the Council even more. I am concerned about his health - he has gone through a lot of grief and loss.

However, he can't come back to this job because he has no credibility. I have not spoken to Wayne since the night of the meeting. Steve Barry told me that if Wayne contacts me that I need to tell him he needs to talk to Steve. I pinged him a couple of weeks ago and asked if he is ok – I was concerned about him. His wife and kids have not heard from him. His family and friends do not know where he is.

He can't go back to that job, and I would also question Clay's ability to do the job as investigator because the field has no trust in staff.

What do you see as the ideal outcome of this fact-finding and evaluation process?

If anything, the Council and I dropped the ball by empowering without follow-up, without checking. The other thing we missed, myself and everyone on the hiring committee, is that Wayne is an excellent trainer, but has no management skills. Did we do anything to evaluate those skills? No. I didn't even look at the interview questions based on the assumption that Human Resources would have put together an appropriate screening tool. If I could go back, would I ensure we got training around these skills to ensure he would be effective? Yes.

Do you think it would work if POST hired an Executive Director and kept Wayne on as a trainer?

It is an interesting question, but it comes back to credibility. If you've lost credibility, you can't train. They [law enforcement] are a pack of gossips, and feed off of each other because they need camaraderie. Kevin [Olson] has done an amazing job with scarce resources bringing MLEA up to a high standard. I am concerned that POST is so bad, I may have lost my credibility to do training, and I met with Kevin regarding this. Also, Wayne's strength is not in curriculum writing, which is where they need the expertise.

POST should come out of Justice. It is a better fit for the Department of Labor and Industry. I wish Wayne would just come home and resign and say that he can't be effective in this job and should step down.



Montana Public Safety Officer Standards and Training
2260 Sierra Road East
Helena, Montana 59602

Phone: 1.406.444.9976 Director's Office; 1.406.444.9978 Fax

Friday, January 27, 2012

Bob McCarthy
1300 Steele St
Butte, MT 59701

Council Members

Winnie Ore, Chair
Public Member

Mike Anderson
MBCC

Harold Hanser
MBCC

Dennis McCave
Detention Centers

Tony Harbaugh
Sheriff's

Jim Smith
Chief of Police

Greg Watson
State Gov't
Peace Officer

John Schaffer
Peace Officer

Louis Matthews
Tribal Law Enforcement

Steve Barry
Corrections

Robert M. McCarthy
Public Member

Ray Murray
Public Member

Georgette Hogan
County Attorney

Mr. McCarthy,

This letter is a request that all files and paperwork that was sent to you from our office concerning the two complaints that we filed last fall (Duryee and Wadsworth) be returned to the office as soon as possible.

If you are unable to return the paperwork by mail, please let us know and we will make arrangements to come and pick it up.

We are in the middle of working through these complaints including a recent answer to a Writ filed in District Court in Lake County. We will be moving these two complaints through the process, we have chosen a "Hearing Officer" and have the assistance of an attorney through DOJ Agency Legal Services.

I understand that you had volunteered your assistance and that is much appreciated, however I also believe that your position as a Council member is much more important to be there during the decision time on these cases as a member of our Quasi-judicial Board.

Please contact our office at your earliest convenience to let us know the best course of action in getting this paperwork back to the office.

Respectfully,

Wayne C. Ternes
Executive Director



**Montana Public Safety Officer
Standards and Training Council
2010-2014 Long Range Operational Plan
May 4, 2011**

EXECUTIVE SUMMARY

The Montana Peace Officer Standards and Training Advisory Council became the Montana Public Safety Officer Standards and Training (POST) Council on July 1, 2007 as a result of legislative action established through MCA [2-15-2029. Montana public safety officer standards and training council -- administrative attachment -- rulemaking.](#) The legislation established the council as a quasi-judicial board and administratively attached it to the Montana Department of Justice, rather than the Montana Board of Crime Control. POST members are appointed by the governor subject to confirmation by the Montana Senate.

POST Council duties and responsibilities are established in MCA [44-4-403. Council duties -- determinations -- appeals](#) and provide that the council shall:

1. Establish basic and advanced qualification and training standards for employment of Montana public safety officers
2. Conduct and approve public safety officer training
3. Provide for certification or recertification of public safety officers and for the suspension or revocation of certification of public safety officers

The law also provides that:

1. The council may waive or modify a qualification or training standard for good cause
2. A public safety officer who has been denied certification or recertification or whose certification or recertification has been suspended or revoked is entitled to a contested case hearing before the council. The council's decision may be appealed to the Board of Crime Control, whose decision is subject to judicial review.

POST Council staff members did not transfer when the transition to the Department of Justice occurred in July 2007. Two positions and a small operational budget were included in the transition and the POST Council hired a new executive director in August 2007. The director worked closely with Department of Justice staff during the transition period identifying and establishing necessary fiscal resources and support and human resource staffing. A full-time administrative support staff member was hired in March to support the director, whose responsibilities include administering POST activities on a daily basis and supporting council activities.

The POST Council held a planning retreat in Bozeman on Feb. 19-20, 2008, to allow council members to discuss POST responsibilities and processes in light of the transition;



Montana Public Safety Officer Standards and Training Council

2260 Sierra Road East, Helena, Montana, 59602

Winnie Ore, Chair
MT. POST Council
WinnieOre@gmail.com
(406) 459-3029

May 29, 2012

Mark Muir, President
Montana Association of Chiefs of Police

Blue Corneliusen, President
Montana Sheriffs and Peace Officers Association

Dear Presidents Muir & Corneliusen:

I am writing in response to your May 21, 2012, letter of concerns with the direction the Mt. POST council has taken and your invitation that I meet with MSPOA & MACOP law enforcement associations, on June 12th at 4:00 p.m. at the Holiday Inn in Great Falls. Although my initial reaction to your meeting request was affirmative, after careful consideration and consultation I must respectfully decline your request and instead invite and strongly encourage the associations to bring concerns to the next "face to face" POST Council meeting. This meeting will be held in Helena, Montana, August 15, 1:00 – 5:00 p.m., and August 16, 8:00 a.m. – 5:00 p.m. I have set the August 15 afternoon POST Council Meeting agenda for MCOP, MSPOA, MPPA and guest issues.

The reasons for my decision to decline your request to meet privately on June 12 are as follows:

- The letter requested only my attendance at the meeting; I feel strongly that the entire Council should be present to hear and deliberate on the expressed concerns and do so in compliance with the Montana Open Meeting Act and the Montana Administrative Procedure Act.
- The MT. POST Council exists to aid in the conduct of the peoples' business and should not meet privately with special interest groups. There are many public citizens that would question why the POST Council Chair or the full Council was meeting with special interest groups. I do not believe it is in the public interest or good policy for the POST Chair or the full Council to meet behind closed doors to discuss matters that should be discussed in an open and public forum.
- In the past numerous citizens have driven long distances to speak to the POST Council and trust that we will not make policy decisions in a closed or non-public forum. And that



Montana Public Safety Officer Standards and Training Council
2260 Sierra Road East, Helena, Montana, 59602

Winnie Ore, Chair
MT. POST Council
WinnieOre@gmail.com
(406) 459-3029

July 11, 2012

Sheriff Vern Burdick, President
Montana Sheriffs and Peace Officers Association

Re: Requested response to MSPOA and MACOP association's May 21, 2012, letter to the MT POST Council.

Dear Sheriff Burdick:


I am writing in response to your July 2, 2012, letter requesting a response to the May 21, 2012, letter from Chief Muir, MACOP President and MSPOA Past President Blue Corneliusen. In response to their letter August 15 has been set aside for MSPOA, MACOP, MPPA and other interested associations and the public to address concerns regarding the Montana POST Council.

The following concerns expressed in the May 21, 2012, letter from MSPOA & MACOP, will be addressed at the August 15 POST Council meeting:

- The POST Council has or is exceeding its statutory authority, MCA 44-4-403;
- Two bill drafts discussed by the POST director at the April Law and Justice Interim Committee in April, 2012;
- A concern that the Administrative Rule, 23.13.101 through 23.13.712, adopted by POST in 2008, are in direct conflict with existing protocols between the Division of Criminal Investigation (DCI) and local law enforcement agencies;
- The POST Council's involvement in Lake County; and
- POST Council's authority to compel sworn statement, and to request confidential criminal justice information.

You may be assured that the POST Council takes the law enforcement association's concerns seriously. I sincerely hope you understand my position that the issues brought forward in the May 21 letter and any others must be discussed in a public meeting in accordance with The Montana Open Meeting Act and The Montana Administrative Procedure Act.

In addition to the concerns listed above, Chief Muir, MACOP President, has indicated that he will be sending a letter to POST outlining additional MACOP issues, with examples. I am

		
STATE OF MONTANA JOB PROFILE AND EVALUATION (revised for DOJ use, 10-4-02)		
<p>The job profile is a streamlined position description and may serve as the core document for all human resource functions such as recruitment, selection, performance management and career and succession planning. It was developed, initially, for use in classifying positions in Pay Plan 020.</p> <p>If you are converting a position to Pay Plan 020 and the position has not changed simply cut and paste the information needed from the current position description. The position description contains sections that are no longer used to classify the position, such as: Working Conditions and Physical Demands; Management and Supervision of Others; Supervision Received; Scope and Effect; and Personal Contacts. These may still be important to the position and may be included in Section IV – Other Important Job Information.</p> <p>When working with a new position, classification request or change to a position in Pay Plan 020, complete the information below to provide the required documentation for classification.</p>		
SECTION I – Identification		
Working Title POST Director	Job Code 113457	Job Code Title Training Manager
Approval Block for DOJ Personnel Use Only : Approved via Delegated Authority 6/25/07 AN ; Move from Crime Control to DCI, no change in predominant work, therefore, previous classification was carried over.		
Pay Band 7	Position Number 41125006	<input type="checkbox"/> FLSA Exempt <input checked="" type="checkbox"/> FLSA Non-Exempt
Department and Agency Code Department of Justice: 411		Division and Bureau DCI, POST
Section and Unit POST		Work Address and Phone 2260 Sierra Road, Helena 444-9950
Profile Produced By Revised June 2007– Kevin Olson		Work Phone 406-444-9957
Originally - Annette Walstad CMS, LLC		406-442-4934
Work Unit Mission Statement or Functional Description - This section should include a complete statement of the mission or function as it relates to the work unit.		

POST – Public Safety Officer Standards & Training Council
Organizational and Individual Workplace Performance Fact-Finding Interviews
September 2012

Name: Jerry Williams 490-1947 jdwilli@bresnan.net	Title: Montana Police Protective Association (MPPA) Executive Director	Date/Time: 9/14/12; 9:00a
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Please describe how, in your role as MPPA Executive Director, you interact with the POST Council and Staff.

My interaction started when we [MPPA] were parties to letters sent in May from MSPOA and MACOP regarding the actions of POST Council staff. A member of the POST Council who represents local policy, John Schafer, didn't feel like the letters were entirely accurate, and didn't want to sign and didn't want MPPA to sign, so we didn't. We were going to have a meeting with the POST Council Chair, Winnie Ore, but she declined, so we didn't. My next interaction was at the meeting in August.

My role is that if one of my members comes to my organization with a concern about the POST Council or staff actions, I will get involved. There was only one that I got involved in so far regarding Wayne Ternes' testimony against a police officer in Missoula [the issue described in the letter from ██████████].

Also, as the legislation came forward from POST, we became a lot more involved. Specifically, the legislation to designate POST with criminal justice agency state, to designate the Compliance Officer as a Peace Officer, and for the POST to take over MLEA. I looked at this as a takeover.

Please describe why you saw this proposed legislation as a takeover.

Based on the two previous pieces of legislation, it looked like a POST takeover of MLEA. We don't know where it came from, and were concerned because I see POST as dysfunctional. Not the Council, but the staff.

I look at their function as providing and approving training, and providing certification. However, they have spent much more time on investigations as opposed to doing what they are supposed to be doing – providing and certifying training.

My fear from the beginning of this, with the Compliance Officer, I had concerns from the beginning, and when he was hired, it turned from being a compliance officer to being an investigator, and I don't recall any legislative testimony [related to SB 273] regarding the need for an investigator.

In 2008, when Wayne Ternes provided testimony, it seemed like he was out to get a cop and make a name for himself, and the actions subsequent seem to reinforce this.

If the Compliance Officer were to be charged with approving training, ensuring agencies are keeping their training up to date, keeping the database up to date, keeping the website up to date, then it would work. If it is a compliance officer and they go around and check agency records, ensure training is up to date/

I don't believe the intent was for an investigator. I was involved in the legislation and the changes, and I testified during the 2007 session to support the bill – the same legislation that made the POST Council a quasi-judicial board, and I supported it with the understanding that the position would be a compliance officer.

What was your understanding, at the time, of how investigations into matters that may affect certification would take place, if not done by POST staff?

I believe the local agencies investigate their own people, or if they do not want to handle it – if it is too deep, or is a conflict of interest they would call the Division of Criminal Investigation (DCI), that is my belief.

POST is in the business of certification and decertification. The local agency investigates issues and if they determine it was a serious issue, they will then send the information to POST who will make a decision regarding certification. I never envisioned POST to be an investigatory agency, but rather a training and certification agency.

When I saw Wayne testify at the trial [the Missoula matter] I had fears from that day forward with his attitude. That is my opinion based on his testimony.

I also worked for MLEA for six years and POST was on campus for about two or three of those years, and I listened to their [POST staff] conversations and it lead me to develop my belief that they were out to get law enforcement and were out to make their name.

What was it about the testimony in the Missoula matter that gave you this impression?

I don't feel Wayne is qualified to testify as an expert in this matter. He has never handcuffed anyone outside of training, and has never conducted an investigation. The way he testified – as being an all-knowing expert as to handcuffing techniques when he had never been in a use-of-force situation indicated complete and total arrogance, and a perception of I'm the best there is. Never having done it, and then telling people under oath that the way the officer did it was all wrong was inappropriate.

I was a part-time director at MPPA at the time this happened, and I urged the Missoula folks to get letters to the appropriate people, and assumed it had been done, but later found that the letters did not get mailed.

As the POST Director, he should have declined to testify and had them subpoena him. Not only did he volunteer to provide the testimony, he arrogantly testified that he was providing it for free.

Do you recall the specifics of the letter from MACOP that John felt were inaccurate?

There was one written in May 2012 that stated a lot of things along with a request for a meeting with the Chair of the POST Council. **You can check with John Schaefer on the issues he felt were inaccurate. When he said there were things that were inaccurate, I took it as gospel;** because he was there, he sits on the Council.

Wayne also made a statement that further concerned me. He said that Clay is going out and interviewing cops with gun, and for his own protection should have a gun. That is utterly ridiculous to think that a cop would pull out a gun and shoot you when you are interviewing them. My other fear is that if you give that person peace officer status, you are even further expanding their authority.

Knowing other things about Clay, him wanting to be the ethics cop for the state is hypocritical. His issue with the motorcycle gang affects his credibility. They are supposedly law enforcement officers, judges, and other 99 percenters, who are members of this gang because they give a shit. That is what their website says. However, they are a motorcycle gang. If you are going to be a member of a gang, get out of law enforcement and be a member of the gang. I've looked at their websites both locally and nationally, and looked at the photos and read the things they say, and having him investigate cops is hypocritical and now he is the acting director.

POST has been dysfunctional from the beginning due to the relationship between Winnie Ore and Wayne Ternes. Wayne was her subordinate for a number of years and their relationship was too close. She was protective of him. For example, with the issue on going to the Legislative Committee without the authority from the Council, and on the proposed legislation regarding the takeover of MLEA, whoever initiated it. To have a discussion with the legislature chairing the committee, and then to come up with draft legislation, he was out of control.

I tried my damndest not to pay attention to the POST after observing them when I was at the academy. It was the little things that bothered me. How the function expanded from an office, then there was a car. The car was being taken home on the weekend. Then with Wayne Ternes living in Anaconda, Wayne and Clay going to all these conferences and training. Wayne Ternes and Clay Coker came back from a training and were actually giddy that they learned they could use Garrity on cops – they were talking about it in the cafeteria. The issue went away for a while, then it came back up at a training in April 2011. The training was actually a guy from Idaho talking about how he used Garrity to get cops. Mark Murphy and I were in attendance.

I asked, in the April 2011 meeting if they had ever used Garrity, and they said unequivocally, that that had not used Garrity and that they did not intend to use it. Wayne Ternes answered the question on April 11, 2011. I asked again specifically at

the meeting in August, and both stated that they had never used it. After the meeting, a Polson attorney, said he was happy, and that their response had just made his case.

I talked to this attorney out of Polson for a few minutes after the meeting in August, and he told me, they've never used Garrity per se, but have threatened officers to take their certificates if they do not talk to them.

In Steve Barry's notes regarding the session on 8/14, he indicate that you didn't seem to believe that they had not used Garrity.

I didn't believe it because the day or two after they got back from the training in Las Vegas, they were giddy that they could use Garrity. As giddy as they were to get this information, I had a hard time believing they had not used it. I may have believed them in April, but am not sure now. I don't trust Wayne and I don't trust Clay and I won't.

Please elaborate on your concerns at the listening session regarding an administrator being notified regarding POST complaints.

The position of MPPA, is that I believe 99% of agencies in Montana can handle their own complaints and investigate them. I personally know the Chiefs and Sheriffs around the state and their quality, and feel they should handle internal investigations. They also know when it is a conflict of interest to too deep, and they hire DCI and I have confidence in DCI and the qualifications of their investigators. That is where I think it belongs.

I don't trust anything they do, from putting data in the database to the way they are conducting investigations.

Sheriff Burdick you may have additional information regarding ethical concerns in how POST staff is doing the job.

From an ethics perspective, Clay and his motorcycle gang are distasteful to me.

The issues I saw at the academy [already described].

I think that when you allow someone to run rampant, they will keep running – issues like the car usage, the training junkets. They took the entire staff to Billings for the Special Olympics. I understand and respect that Wayne volunteers his time for Special Olympics, but think that this was a waste of money and potentially a breach of ethics. It leads to the perception that they are taking advantage of something.

Any other issues?

I've requested copies of the policy manual and never received anything.

When they formulated the ARM changes in 2008, they should have been noticed to us. I can't remember even seeing a notice. I don't remember receiving anything and all the associations should have been notified. The rule changes were done to enhance their ability to conduct investigations against law enforcement officer.

The arrogance in Wayne is way beyond me, and it is unfortunate. He has lost a lot of friends in law enforcement. I like him as a person, but as POST Executive Director, I do not trust him.

They do not have a specific policy manual at POST. Winnie covered that question up. I asked for copies of the policy manual and compliant form, and still haven't received a thing. I was assured by Winnie I would get them, and haven't.

What do you see as the ideal outcomes of this review and what recommendations do you have for the Council?

I feel both Wayne and Clay should be removed and they should start over. The director should have law enforcement experience – a minimum of ten years, and training experience. Wayne had the training experience. They need to start over with a Chair that will run the Council in a professional manner. I think some past meetings were unprofessional.

For example, I was off work from MLEA and attending a POST Council meeting. Winnie went off agenda and asked me to provide information regarding training I provided regarding mental illness. It was totally off the agenda and I felt like she was putting me on the spot asking me questions because my boss could have addressed these questions during his report. I was put on the spot and should of declined, but out of respect for Winnie, I didn't/

I listened in on the special meeting, and Winnie went off agenda to welcome someone to the meeting and to comment on their baby. At this meeting, they had a memo I requested a copy of, and they said it was a confidential memo protected by attorney-client privilege, but I later got a copy of the memo.

They need to get the investigator position back into the role of compliance officer. The situation in Lake County was a mess, but the issues did not come to light before this. The Compliance Officer should ensure agencies are doing what they are supposed to do, certify training, provide training, focus on ensuring the database is up to date. If you provide a training roster, and there months later, the database is still not updated, it is a problem. Fulfilling these roles is what I think was the intent of the legislation.

Are there others you feel I should talk to?

John Schaeffer – he is a member of the POST Council and a member of MPPA, and he said there were some inaccuracies in the May letter to the POST Council. The initial [May] letter was from MACOP and MSPOA.

You should also talk to the lawyer out of Polson. Based on his comments after the meeting, I would ask him about that. He was told by his clients that he is representing that they threatened revocation of certificates if his clients did not talk to Fish, Wildlife, and Parks.

Attachment AA

The whole Lake County thing was a mess. It was rumor and innuendo, and they kept going. It is my belief that they are out to get a cop and make a name for themselves.

POST – Public Safety Officer Standards & Training Council
Organizational and Individual Workplace Performance Fact-Finding Interviews
September 2012

Name: Perry Johnson 406-375-4060 pjohnson@rc.mt.gov	Title: Ravalli County Undersheriff	Date/Time: 9/18/12, 2:45p
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Please describe your interaction with the POST Council staff.

I didn't have a whole lot of interaction with POST. Most of it was in the form of hiring someone, or when someone terminates, we submit paperwork.

We asked for a decertification on a deputy sheriff who stole ammunition from our ammo bunker – about 40 – 50,000 rounds. We suspended him with pay pending an investigation; called DCI [the Division of Criminal Investigation] for the criminal investigation, and opened an administrative investigation. We interviewed the deputy, [REDACTED], and we submitted the paperwork to have him decertified.

One issue we have with POST is it's a black hole. You can write letters and make phone calls, and you never get the benefit of a call back.

We didn't get a contact from them. We're trying to take a bad apple out of the barrel and send a message to the community that we're doing the right thing.

What concerns us even more, I was at a Coroner recertification at MLEA when Deb Butler said to another Coroner, [REDACTED], I guess you aren't going to get decertified over that death investigation, and we both stopped in our tracks. We were being sued by a family trying to get the cause of death changed on a certificate, and the family filed a complaint with POST. If we don't know that a complaint has been filed, we can't learn from it. POST is supposed to set the standard, train to it, and give us a roadmap to meet the standard.

On [REDACTED], we never were contacted and don't have a correspondence from them. You can go into the POST website, but no names are named, so you have to put two and two together. There was nothing for me to put in his personnel file, nothing for me to tell a prospective employer.

I've terminated people for cause and talked to administrators who've hired the same guy. It's hard to hire guys that are POST Certified and as long as they've still got it, they are still looked at as a viable employee, so having a decertification letter in their file would make our jobs a lot easier if someone calls.

Have there been any other actions you weren't informed of?

How would I know? I am sure there are additional complaints, but they don't let us know what is going on. For example, [REDACTED] – he's infamous for making threatening calls to the Governor's Office, Senator Tester, Senator Baucus, anyone he

thinks he can threaten or cajole for his agenda. I will bet there is a POST investigation report – I bet there are investigative reports on complaints. In front of the POST Council, we were talking about complaints with no merit to them, and my point before the Council was, if there was no merit to them, why is there an investigation.

This is a departure from how it used to be. Someone circulated a letter from Alan Horstfall. The way he started an investigation was to write a letter to the administrator saying that on this date, we had a complaint from this person, can you provide any information on this. Part of the discussion with the POST Council was a procedure where they would contact the administrator and see if there is any validity to the complaint and if the allegation was regarding the sheriff, they would contact the county attorney, or if it were regarding the chief of police, they would contact the mayor or city council, that is the mode they used to use.

Do you believe they investigate complaints that have no merit?

Without contacting the administrator regarding the allegations, they have no idea of the complexity or the context of the complaint, or the merits of investigating it. They are working in the dark and do not know the context of the complaint. How can you investigate a complaint without contacting the administrator?

Their complaint procedure says, we will help you understand the policies and procedures – we will help you with this. I'll tell you, POST doesn't have my policies and procedures – they've never asked, so how can they help a community member understand them.

At the POST meeting, Kevin Olson described mission drift. What administrators are looking for from POST is training standards and training certification.

I think they are investigating things they shouldn't.

I June, I testified before the Law and Justice Committee, and they also took testimony from Frank Bowan from Fish, Wildlife and Parks about Lake County. POST testified. Wayne Ternes testified following the FWP guy. We should not embroil staff in investigations in these situations. You will not come into my jurisdiction and compel statements and start using Garrity or Weingarten. Why would they inject themselves into an investigation like this?

Do you have any examples of POST staff requiring compelled statements or using Garrity?

Only anecdotally. It is my understanding they have used the certification to compel interviews in Polson and Lake County. I have been told these guys said, if you do not give a statement, I will take your certificate.

I've never interacted before the POST Council, and was fascinated by the dynamic. Steve Barry was very sharp and asked good questions. Winnie Ore said [to us], you guys need to be involved, and I agree.

Have you talked to [REDACTED]? He wasn't hired, he was elected. It is my understanding he threw a guy through a bar window, and has been contacted by POST telling him that if you turn in all your advanced certificates, we'll let you keep your basic. They have a lot of latitude.

Frank DeFonzio from Sidney spoke, and his question to him was this, what consideration do you give to sanctions imposed by administrators?

I've been a sheriff and an undersheriff. A community picks a sheriff, and now POST is saying, we can unpick you. In June, Wayne made statements in front of the Law and Justice Committee to this effect.

Have you talked to Jim Oberhoffer and Alan Horstfall. These guys are really neat and brought a wealth of information.

It looks like we have a POST Director without experience in law enforcement. They knew what the culture was, and if you don't understand the culture, you have to adapt and learn.

My opinion is there has been mission drift and an outside influence. If you review the statutes, look at the POST statute, and you will see [mission drift]. MCA says, that POST will follow, and the administrators will follow those standards.

We're very lucky in Montana, because MLEA is setting training where officers will get college credit.

Could you provide more detail on your concerns with the Reserve Officer Program?

What I believe is the Sheriff's issue on these is that the program says you have to have 88 hours of training. At some point, POST reached out and asked what our training looked like, and we sent our training outline to them and have never heard anything back.

POST has taken the position that if you want to be a reserve officer, you need to get POST basic and spend 14 weeks away from home. All my reserve officers have day jobs, and are volunteers. If you mandate they go to basic, there is no reserve officer program. The question came up, how do you feel about putting someone with 88 hours into someone's home with a gun. My position is that these guys took the time to go through training and are competent to hold the fort until a deputy or sheriff gets there.

Vern Burdick also spoke to this. Wayne's proposal for the basic requirement for reserve officers will eliminate the program.

I've hired, in the last couple of years, three guys right out of the reserve program. A good opportunity to assess them and build leadership.

I have never called DCI and had them say they won't get involved. They are independent of me. The subject of the investigation would be in my office and would be forced to make a compelled statement [during the administrative review], and there is no disclosure between an administrative query and the criminal investigation. DCI can talk to the same guy, and he can provide disclosure or invoke his rights. They have to find the information someplace else.

The big thing is the stuff I don't know about. It is stuff that lives in the files at POST that we don't know about relative to me, my Sheriff, my officers and I don't know what traction they've given to those who make accusations.

Has any reason been given as to why they did not get back to you?

No. Nothing. It is a vacuum. No one is saying, 'we can't talk to you for this reason.' They are not calling at all, so if they are looking into an issue, how can they do it. The allegation procedure says they protect citizens from misconduct by public safety officers, and they protect public safety officers who conduct themselves appropriately. I have a coroner in civil court. How did they protect him? That case took a district court judge to look at it and determine an outcome.

What concerns me is that the tail wags the dog. I understand this happens from time to time, but in regard to a quasi-judicial board, and having a staff that says, you can't look in here, you can't see how I'm doing, because you have to make a decision.

What qualifies a couple of guys in Helena to decide what is right for my community? How can you do this work if you don't understand Weingarten, Garrity, the terms of my collective bargaining agreement, the terms of the job offer? How can they apply the standards without knowing these things and knowing an officer's job status?

DeFonzio asked, what consideration do you give action taken by the administrator. There was no response. They didn't have an answer and after the session, Muir and I were the last people in the room. Muir said, 'respond to this man, don't hide it, we'll use it as a roadmap.'

What strengths or positives do you see with Director Ternes?

I just haven't seen anything. I can't weigh negatively or positively, except what appears to be a mission with Lake County and I don't want to be involved in something like this and don't need to be, I've got enough issues.

I listened to Roger Krauss the police chief, who said to Wayne, 'you testified to this and it wasn't true, you misrepresented this.' I am alarmed when I see a guy like that coming forward with this type of issue.

I think the board has great intentions and have been excluded from information that would help them make good decisions.

Attachment BB

Trust is broken. This isn't a crisis of confidence, this is broken, and there are staff who not only do not have the trust of local law enforcement, and I don't think they [staff] even have the trust of the Council. What are you going to do now? How will you recover from this because you are not able to do it here?

Is there anyone else you feel I should talk to?

Jim Oberhoffer, Alan Horstfall. We didn't deal with this with them, and I heard law enforcement is interested in getting back to certifying training, identifying training opportunities, tracking training, and keeping track of certification. You set it, and we will apply the standards.

Freedom Crawford, Brian Gootkin, Vern Burdick.

POST – Public Safety Officer Standards & Training Council
Organizational and Individual Workplace Performance Fact-Finding Interviews
September 2012

Name: Brian Gootkin brian.gootkin@gallatin.mt.gov	Title: Gallatin County Sheriff	Date/Time: 9/19/12, 2:00 p.m.
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Please describe your history and interaction with POST and its staff.

My main interaction with POST is through the Montana Sheriff's and Peace Officers Association (MSPOA). I am on their board. Most recently my interaction has been in my capacity as Undersheriff and Sheriff.

With MSPOA, concerns started to surface. Sheriffs were not being involved in personnel issues in their jurisdictions, and POST was not answering phone calls. I asked my training people if this was a pattern [failure to answer the phone or return calls], and they told me it was since Wayne Ternes took over. I looked into this when I was the Undersheriff.

I have nothing against Wayne Ternes personally, but unfortunately, he has created this. With Alan Horstfall and Jim Oberhofer, we never had any issues we couldn't resolve, until Wayne took over.

I talked to Jim [Oberhofer] to get clear on the POST process. I know we fill out a slip, but do we make a recommendation? Jim said that it is a two-way street, that the POST communicates with the agency and vice versa. Jim said that he did open investigations as POST director, and that the first call he would make was to the Sheriff or Chief, or the Division of Criminal Investigation if necessary, and then it was his job to bring it [the findings] to the Council. The way I understand the process is, I gather the information and pass it along to POST, and if they have questions, they will ask me to come down and give my opinion. There may be more than just the specific incident [to consider].

For example, we terminated a deputy for stealing money out of an ATM, but in addition to this incident, he had two letters of reprimand for dereliction of duty. We sent the information to POST, and there is still no decertification. I don't know if Wayne or the POST Council have addressed it yet. It was just recently adjudicated, within the last couple of months. At the meeting in Helena on August, I found out that there were three open investigations on officers in my office. Chief Clark from Belgrade asked me if I was aware of the three open investigation in my office.

One or two of them opened last year. I asked why I hadn't been notified at the meeting, and Wayne tried to explain that he heard about one case on the news, or that in another case, an inmate had contacted POST. However, there had been no contact to us letting us know what was going on.

After the meeting, Wayne tried to explain how he received the information [on the deputy that stole the money from the ATM]. He said that the deputy who stole the money was in Ennis and the Chief contacted them. I checked with the Chief and he said, no, POST contacted me. I didn't know how he found out about it, but Wayne finds out information and starts his own investigation.

We also had a detention officer case that opened last year. A deputy assaulted a female juvenile. It was in the news, and that is how Wayne found out about it.

Do you know if POST has a specific policy about notifying the administrator in these situations?

I thought there was something that said he had to notify the administrator. You will want to check with Jim Oberhofer on this.

When were the concerns regarding the lack of notification to the administrator first brought up to POST?

When Lake County blew up was when the MSPOA heard about it.

Instead of returning phone calls updating training records, and maintaining the certification program, he wants to police the police, and go out and investigate law enforcement.

I don't know or want to know the specifics of Lake County, but I trust DCI. We work side by side. So, when POST and Wayne Ternes go down there and potentially obstruct an investigation, I have concerns.

Jim Oberhofer acknowledged that there are cases where the sheriff or chief is not holding people accountable, but he [Wayne] was not working with anyone on Lake County.

It was also apparent that he treats all of us Sheriffs and Chiefs like we are trying to cover something up. I've heard Wayne say things at meetings like, you won't believe what is happening around the state, or you won't believe what I am hearing.

The other big issue that has damaged credibility was Wayne Ternes testifying in Missoula against a law enforcement officer as an expert witness.

He also went and testified in front of the Law and Justice Committee with Shockley regarding Lake County. I attended another Law and Justice meeting about some other stuff, and Shockley said something derogatory about law enforcement in Montana. Shockley was generalizing the lack of law enforcement in Lake County. Perry Johnson was there, and was livid that a senator said this in a hearing, but it seemed like this is information he was being fed [from Wayne Ternes].

At the meeting last month, I asked, who is Wayne's boss? Winnie Ore said it is the Council, and I asked if they were aware he was going to testify before the Committee,

and if they authorized it. When I asked, it appeared the Council had not authorized the testimony. Wayne wanted to do it, and it seemed like a big set-up, like it was planned to get the legislature to implement these bills. Everyone was wondering what was going on here, why was it before a legislative subcommittee if DCI had already investigated it? At the meeting, Shockley said, listen up sheriffs, this is a great way to pass the buck, but I was not elected to pass the buck, and am going to deal with issues in my office. Either he did it on his own, or Winnie said, go ahead, but I am not sure that the Council knew what he was going to do.

This is just like his testimony in Missoula. How is that your role as POST ED?

What do you know about the concerns regarding Lake County, specifically, do you have any knowledge about the use of compelled statements?

It was brought up at MSPOA Board meeting that DCI had done their thing and that a Fish, Wildlife and Parks officer called Wayne Ternes and asked him to make a threat that they had to answer questions or their certifications would be pulled.

I am concerned that they would think they can do this in my county. If he did require the compelled statements, it is inappropriate and unprofessional.

It is also hypocritical to have someone who can't do their own job coming in and investigating me or my staff. This is throwing rocks when you live in glass house. You don't police the police when you don't know what you are doing or what you can or can't do.

You also mentioned in August a concern with comments Wayne made with regard to an ongoing investigation. Please elaborate.

This comment may have had to do with the thing that is still happening in Lake County. It was with Lucky Larson. Mike [DCI] had an investigation going, and Wayne was making statements during the same time.

You should talk to Mike Batista who has serious concerns about what they were doing that was compromising the investigation.

Do you have any knowledge of the potential legislative proposal for POST to take over MLEA?

This came up at the MSPOA meeting, the MLEA/POST thing, and people were wondering what they were thinking.

[With regard to decertification] I want to be able to go before the Council and give my opinion, this person shouldn't be a deputy versus situations where it was a mistake and an insulated incident that occurred when the officer was going through a hard time or there were other circumstances.

I am also concerned with the lack of responsiveness. The only thing that has happened since the last meeting is that Clay sent two letters and an email regarding an ongoing

investigation. In these cases, I had to ask, who is the complainant? It took three emails to get an answer, and I cc'd these emails to the entire board, and MSPOA has a meeting in Fort Benton on Friday. I can send you the emails.

What do you see as positives or strengths with Wayne Ternes?

When he was at the Department of Corrections, he communicated. He worked with us, but he has not done that as POST Director.

As open-minded as I am, and as much as I believe in giving people second and third chances, I don't think he can rebuild trust.

I know of administrators he has allegedly lied to, and if you lie you die. If you make a mistake and take ownership, people will give you a second change.

Who specifically felt he was dishonest?

The Chief in Kalispell felt Wayne was dishonest.

For me, trust in Wayne Ternes is gone. To find out he has three open investigations and never gave me a call is behind-the-scenes backstabbing. I feel the same way about Clay. Clay Coker and Wayne Ternes are doing the same things – he is right there with him. Other administrators also have issues with Clay.

What do you see as ideal outcomes or appropriate next steps?

They've already taken two huge steps, putting Wayne on administrative leave and doing this investigation. This means that they listened, and that is huge to sheriffs. With that being said, many people are hearing the same thing, and Wayne Ternes is the common denominator.

They have to follow through on the information we give them and impose accountability. As an administrator, I deal with hundreds of employees and hiring and firing. If there were this type of behavior with one of my employees, they would be gone. You can't do this in our business.

Perry and I went to the Law and Justice Committee meeting about two weeks ago, after the POST meeting in Helena. We were told Shockley was going forward despite POST's withdrawal of the legislation. The attorney went up and said, we withdraw.

Do you feel there is anyone else I should talk to as part of this review?

Tony Harbaugh
Dennis McCave
Jim Smith
Perry Johnson
Chief Muir.

Attachment CC

In a past session, they got them away from the Board of Crime Control, and put them out as their own agency. They should put it somewhere where there is accountability. Someone has to be directly responsible for the POST Director and employees.

You've got people on the POST Council with limited knowledge of law enforcement, so the process with local agencies and DCI is new to them, so Wayne Ternes can blow smoke and they won't know the difference.

I have one more recommendation to the POST Council. I know this is a personnel matter and that the findings are confidential, but whatever they can do within the law to let the sheriffs know what is going on will be appreciated.

There also has to be accountability. I don't want Wayne coming into my offices and making a bunch of excuses.

POST – Public Safety Officer Standards & Training Council
Organizational and Individual Workplace Performance Fact-Finding Interviews
September 2012

Name: Doug Chase 406-549-8649 dchase@bresnan.net	Title: Former Polson Police Chief Former Missoula Co. Sheriff Former Missoula Police Chief	Date/Time: 9/25/12, 11:00 a.m.
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Describe your history and interaction with POST

I can tell you I've never had a bad interaction with POST until Wayne Ternes and Clay Coker were there. I have dealt with post as Polson Police Chief, Missoula County Sheriff, and as Missoula Police Chief.

My understanding on the way POST is supposed to work is not the way Wayne Ternes and Clay Coker have it aimed, and that was frustrating.

I felt like I was being bulldozed, but have been in the business for 40 years, so it would take a lot to bulldoze me.

I couldn't understand why this was coming about. Why my officers were being investigated for ethics when there had been no convictions or even charges. Where were they getting their information? I've never experience this with POST.

Normally, with officers we were dealing with, we would notify POST, or if they saw something in the paper, they would call. I thought the agreement was that either the agency would conduct the investigation or DCI would conduct the investigation and we'd let the cards fall where they may. I think politics came into the accusations and angst [in Lake County]. Not necessarily a political motivation on Wayne and Clay's part, but a motivation behind the complaints

I can give examples

██████████, one of my officers now, not then – he was with Lake County then, had a boating accident and a woman was killed. ██████████ was investigated by the Flathead County Sheriff – they called in Flathead to do the investigation, and no charges were filed and no malicious comments were made, other than this was a tragedy. Flathead found nothing and it was closed. Somehow, after the investigation was closed, I heard they were going to take another run at ██████████. It's been in the rumor mill, I heard it word of mouth from people, but I can't pin it down, but within the last two months, I've heard they are going to take another run at ██████████.

Fish, Wildlife, and Parks as I understand it did not investigate the boating accident, I believe Flathead County did. This upsets me only for the fact that if the investigation had been done by their own agency and there were questions as to the legitimacy, that

would be one thing. However, Chuck Curry in Flathead has an impeccable reputation, and if the case was closed, why reopen it?

They [FWP] charged a deputy in Lake County with poaching a moose by Kalispell and the charges were dropped, and then all this started coming down, and two other officers have been accused of poaching. I asked my officers if this was happening under my watch. I also understand the allegations were past the statute of limitations and one officer was Lake County and another was tribal.

Captain Anderson from Kalispell and I visited with Frank Bowen, who was the FWP investigator, and there was a lot of information flowing from FWP to POST. Allegations that [REDACTED], who is not the assistant chief, were involved in poaching.

They could come up with no evidence other than a situation where [REDACTED] killed an elk for a young boy who couldn't do it. The animal was thrashing and in pain and [REDACTED] put the animal out of its misery.

I think POST got involved in this on an ethical theory, and teamed up with the FWP investigator who was sharing information that should not be shared.

This was about March 2010, but it kept going on and on and on and started affecting my officers – little tidbits of information came out and they were put in turmoil. I saw officer safety at risk, and it began to affect their family life, they had heavy loads.

POST had threatened ethical violations and termination of certificates and it affected these officers and upset me greatly because nothing was being substantiated. It was all rumor, innuendo, and hearsay.

There was nothing other than the story about [REDACTED] putting the elk down.

How did you get the information about [REDACTED] putting the elk down?

From the POST and FWP. They were investigating [REDACTED] and nothing came up. When [REDACTED] name came up, he told me about the elk incident and I 100% agreed with his actions. Nash and I never had a conversation, but I saw his distraction and I saw [REDACTED]'s distraction. It went on for months and every few weeks, something else was leaked.

Ternes and Coker came to see me one day, and I was firing an individual from the department for conduct unbecoming the office. They came to my office just as we were convening the staff meeting to make the final determination, and I had to excuse myself, so no way did I know what they were there to do other than to look into this as an ethical violation and possible revocation of certifications.

Shortly thereafter, they contacted James Raymond and said they wanted to meet with him about me and my officers stonewalling.

I was advised by Mr. Raymond and their [the officers'] attorney that the officers were not to talk to FWP or POST because they were bulldozing.

I think the POST Council had no idea what Wayne Ternes and Clay Coker were doing, and there was empire building by Wayne Ternes and Clay Coker to make POST a more formidable organization than in the past, particularly in light of Wayne Ternes' proposed legislation to expand POST authority.

I met with James Raymond, John Stevens, Wayne Ternes, and Clay Coker. They never called me to say they were going to meet with the City Attorney. My officers were directed not to submit to POST or FWP. The meeting lasted about an hour, and James Raymond submitted a written statement. He also spoke to the POST Council with Jay Doyle, Mitch Young and I. That was in August 2011, and I never heard a word back.

It was obvious to me that the train was coming through the station and if you get in front of it, you will get run over. After 68 years and 44 years in law enforcement, it looked like they were headhunting.

Do you know if Wayne or Clay ever used compelled statements with the officers?

Ted Chester in Polson is [REDACTED] attorney if you want to find out. I don't recall that, but I know there were a lot of threats coming from POST and FWP. I told my three officers I was not going to proceed with an administrative investigation at that point, and was not going to compel them under Garrity. Our legal counsel advised me that our officers have the right to remain silent. Lawsuits are being considered because this was so poorly handled.

Plus, I've never before heard of POST pursuing decertification before charges have been filed or a conviction is made.

A county attorney such as Mitch Young said no charges will occur. I couldn't accept the fact that they were going to try to take certifications before charges were filed, but Ternes was emphatic that they weren't going to wait for charges or convictions because he didn't want officers who are unethical in law enforcement in Montana. This is not how it's been done, and I see people being railroaded and pressured, and they haven't even been charged and this doesn't sit well. I don't think POST had the slightest idea what was going on, and if you listened to the tape, all you hear is that there is no trust.

Wayne Ternes is a very personable guy and is sharp, but got way ahead of himself without the POST Council's consent. I was listening in during the day, and I heard the Gallatin County Sheriff say that Wayne had three of his deputies under investigation and hadn't notified him, then he let him have it.

Unless I am suspected of trying to hide information as an administrator, I need to know right away and with no delay if there is something going on.

Perry Johnson from Ravalli and Mark Muir from Missoula, and Gootkin from Gallatin were eloquent in describing why we can't have these things.

I don't know that Wayne Ternes and Clay Coker did this maliciously, but there is no faith, and nobody would admit they've done wrong.

I don't think POST knew what was going on or that they would agree if they did. I don't think they knew about the two proposals to the legislature to give POST more power, and that is the last thing they need [more power].

I don't know if it's Coker, but I know he is supportive of his boss, and I understand and respect that, but if I was in the position Clay Coker was in, I would have fought Wayne Ternes probably to the point where I would have gotten fired. It bothers me that you can take good, credible people and accuse them of ethical violations while at the same time they are leaking information.

I was going to retire in May 2010. My body told me I have no business wrestling people on the street anymore, so I was going to leave, but I decided to stay with my officers until all this was over and I went to the meeting. The FWP guy stood up at the August [2011] meeting and said that the matter was closed, and after this, it gives Wayne Ternes and Clay Coker nothing to operate on.

The other thing that bothers me is Batista and Strandell have impeccable reputations, and were asked to look at this two times and they found there was no probable cause or basis for charges.

When were these cases initiated?

When the guy was accused of killing the moose and when the contentious race for sheriff took place. I don't have the date, but that would be easy to get. FWP brought charges, and all of a sudden there were discussions.

Please describe the notification process with you as the administrator.

The only time they came in was when I was firing the employee. That may have been the day they came to notify me, but I couldn't break to visit with them because I had a personnel issue that had to be dealt with immediately, so they may have been there to talk then.

The next meeting was at Raymond's office at 4:00 where I invited myself through Raymond, and that was when I was told POST was not going to wait for the court or for charges and was going to get this cleaned up.

I wrote a letter to Winnie Ore, I sent it registered or certified, requesting a copy of the August 2011 meeting minutes and I never heard a word back, not even a go to hell, so that set the tone that it was a one-way street and I wasn't going to put up with it.

I've relied on Batista and Strandell and their investigators' viewpoints. There were two people at POST who I believe were empire building and making a power play, and there were some members of the POST Council who had no idea what was going on.

Dennis McCave was beside himself with some of the things that were happening, and then I found out that POST is almost autonomous. After that, the tribes had written a letter. I am not impressed with the way Bowen conducted himself and with his sharing information that was allowed to leak.

The information was in the Flathead Beacon and the Missoula Independent. It is so blatant that someone in the know was leaking information which was smearing officers and creating total havoc in their lives.

I just want POST to do what it was originally doing. It is not an investigative agency as far as having police power or having access to CJI.

When you get to the point that three major associations have no confidence in the Executive Director, you know that where there is smoke, there is fire.

I didn't attend the August 2012 meeting, it was the August 2011 meeting where me, Mitch Young, and James Raymond travelled to Helena.

There were officers being accused of things, information being leaked, and they were dragging it out. It's been going on for more than 18 months and no charges have been filed and county attorneys with good reputations are not filing charges.

I don't hold any ill will toward Wayne and Clay as far as them losing their jobs, but someone needs to put them in their place and mind the store. They brought this on themselves and there are three police organizations that went to Helena and spent a day at a meeting, and there is something wrong. If I were a POST Council member, I'd be jumping up and down. If you have people like Mark Muir, Perry Johnson, and Brian Gootkin testifying, you have a major problem.

It can't continue in the same way or you will have an explosion. Law enforcement, the county attorneys, and DCI will rise up.

FWP said it was closed at the [August 2011] meeting. Ask Raymond. James Raymond turned in a lengthy letter to Winnie Ore, and I don't think POST responded. Myself, Mitch Young, John Stevens, and Raymond went to Helena. This was the meeting I asked for the minutes from.

What do you see as the ideal outcomes or appropriate next steps for this review?

If I were making a recommendation to the POST council, I would recommend they follow up with James Raymond's letter. He spells it out.

I'd like to see some apologies. If I was the director, I'd think, all three organizations can't be the problem, so I need to look in the mirror and not be proposing that I get additional authority.

Mark Muir, Chuck Curry or Brian Gootkin aren't going to put their reputations on the line for the actions of an officer who is doing something illegal.

I don't know that Ternes can repair the damage, but it would be great if he met with the three organizations with someone from the Council there to hear what he said.

It is an affront to me to think that I was in question or that Mark Muir was in question. He had that officer with the pornography charges, and you can't explain this adequately to me as to why it was handled the way it was.

We couldn't get any flexibility from Ternes and Coker and it was their way or the highway. You've got cops who are working on the street, and we're not going to back down if we know we are in the right – they are not going to scare me.

I never in all my years of law enforcement tried to scuttle someone through the back door. To challenge Mark Muir is unbelievable, and for the Gallatin County Sheriff to learn that there are three open investigations on his people after the fact is unacceptable.

Perry said, how can you conduct an investigation on a department that is known to be legitimate.

Integrity. That's what I want to be remembered for. Integrity and my reputation, and I am not willing to compromise those for some officer who is doing something illegal.

The best thing that happened, after all this explosiveness, was getting that meeting together.

Is there anyone else you feel I should talk to?

Brian Gootkin, Gallatin County

Dennis McCave

MSPOA President

Patrol Officers Association President.

POST – Public Safety Officer Standards & Training Council
Organizational and Individual Workplace Performance Fact-Finding Interviews
September 2012

Name: Mike Mehn 459-5087 mehn@imt.net	Title: Fish, Wildlife and Parks Retiree Former POST Council Member representing FWP.	Date/Time: 9/26/12 1:00 p.m.
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Describe your history and interaction with POST

I am a former member of the POST Council. I was appointed by the Governor in late 2005 or early 2006, and during the restructuring, they decided that they wanted only one state agency representatives, and that was from the Montana Highway Patrol. I am also a former officer with Fish, Wildlife and Parks (FWP), and an officer ethics instructor.

I am aware Wayne Ternes is on administrative leave. I have to say I'm really in Wayne Ternes' corner. He did a good job. He may have stepped on some toes of chiefs that don't like him looking into officer ethics.

POST decertifies and suspends certifications. I see a few agencies that don't like POST snooping around, when there is really some dirt there and that will come out eventually.

You can't have cops looking over other cops, that is why the POST implemented the investigator position. The profession is good, only 1% of cops are ever subject to decertification, where it is ten times that amount for attorneys.

Politics played into it. The Attorney General wanted these issues to go away. Wayne did his tasks well, and his integrity is not in questions

A fair amount of this points right back to the Attorney General. The Attorney General did not want to do the investigation, so he turned it back to the counties to do it. I think it's a shame. I've known Wayne Ternes a long time, and we went through officer ethics together. He is a great trainer, and he is good to get along with.

Why has POST been given an investigator, and why did they have the Administrative Rules changed if they don't want him to do investigations?

I think they are barking up the wrong tree and will find nothing of substance with Wayne. He can quote ARM and MCA.

There are comments from local administrators that they want POST to get back to what it originally used to do, and if that is the case, POST would be a file cabinet of certifications, and I don't think that is what the public wants. They want oversight of law enforcement.

The proposal for mandatory reporting to POST of criminal activity on the part of an officer, criminal activity must be reported to POST. Some administrators who spoke against this said things like, do you want someone who gets in an argument with their neighbor to be reported? No, but criminal activity, yes. The public would want that. Even a disorderly conduct – getting in a fight in a bar, that guy may have alcohol or anger issues, and this should be reported.

I hate to see politics get in here.

Why do you believe that the Attorney General wanted these cases to go away?
Nobody told me that, but I think a lot of people are thinking the same way. A lot of times, when an officer is considering bringing charges against someone, they will consult with others, get advice from a county attorney or the Attorney General. I saw in the paper where the AG was notified of investigations in Lake County. Serious investigations – a death, intoxication, threats to an officer who called with a complain, and the Department of Justice handed it back, saying, you have a county attorney to look into it.

This is like an oil company going to another oil company, rather than the DEQ with a complaint.

I am retired from FWP and know that FWP has a good working relationship with the confederated Salish and Kootenai tribes, and FWO prides itself on the relationship with the tribes.

There was something going on in Billings too.

There was also an issue in Missoula. Wayne was asked to testify on a Corrections issue – that is not how you run a jail, and Wayne Ternes told me that Mike McGrath told him to go and to tell the truth.

Some agencies don't want Wayne snooping around their agencies.

Talk to Wayne Ternes and look at the Lake County stuff. Missoula and Billings recently felt aggrieved by Wayne Ternes doing an investigation.

If Winnie Ore, one of the finest people who has worked in state government, if she resigned over this, that is telling. She is sharp as a tack.

As you may have heard at the meeting, one of the concerns expressed was a lack of notification to the administrator when complaints are received regarding their office. Do you have any information about this?

I think Wayne Ternes talked about this. I don't know Wayne to roll in in secret, but it was the type of thing where you need to find out if there is any meat to the story - an initial investigation where they do not notify the agency, but then if it appears there is any substance to the complaint, then they do.

For example, about five years ago, there was a police officer in St. Ignatius, who a 16 year old girl asked to do a ride-along with. She was interested in law enforcement, and did a ride along with a 40 year old cop. She was 16, and the age of consent, and this officer took sexual liberties with her, and the father was upset and called Wayne Ternes. Wayne Ternes went up there, and the guy now had a sheriff's car parked in his driveway.

I teach officer ethics and Wayne comes in and speaks about it. We tell them, we're keeping track, and here are the ARM rule.

Some officers are in the class because they have an issue, and a lot of the course evaluations indicate that they need this type of ethics training. Three times more officers die of suicide than are killed in the line of duty, and a lot of these suicides relate to or are the result of ethics issues.

You mentioned that in the past there were good relationships between FWP and the SKC tribes. However, some of the folks I've interviewed have told me this relationship and the tribes' relationship with POST is damaged. Do you know any more about this from a FWP perspective?

I still talk shop with people in the department, and I still work for TIPMONT. I did an undercover investigation in Sanders County in 2004 or 2005, and it spilled onto the reservation. We worked with them on the investigation and take down, and everyone was happy with the outcome. We got the guy, we worked well together, and there were a lot of pats on the back at the end.

If Frank [Bowen] stepped on some toes by knocking on doors, he is like an Army Ranger, and you have to do digging and police work. The way I hear it is that by that time, some former officers had left the agency over threats or because they did not want to work for an agency with problems, and they are the ones who got the ball rolling. There was evidence removed from garages and trophy rooms.

Do you know of other people I could talk to
Lee Anderson, the FWP Captain of Region 1 in Kalispell
Chief of Law Enforcement Jim Kropp.

What do you see as strengths or opportunities with Director Ternes?

I don't know if Wayne could do it, but someone in charge, the Attorney General or someone in charge of the POST Council needs to set a clear direction. I think that is where Wayne tried to start and do a task that hasn't been done properly in the past.

He [Wayne] still provides training to other agencies. He teaches self-defense and is a real advocate of officer ethics. I'm guessing he is doing this training as POST director where he is approved to do training. He hasn't done training for a while, we held classes and an officer ethics refresher and Wayne was a real part of it.

Some officers need to be slapped on the side of the head. We do refresher training in self defense and firearms, but ethics is not a mandatory refresher.

Ethics – if an officer lies, they can never testify again. If they were caught lying on the job, they can never testify again because they don't have credibility, and Wayne is a big advocate of this.

The statistics are that per capita, sheriff's offices have more incidents of misconduct than any other law enforcement agency, in part because they are elected. There is a sheriff in Montana who is a convicted felon.

What do you see as the appropriate next steps or ideal outcomes of this review?

The Attorney General needs to sit down with POST, MLEA and the heads of the associations in Montana and say, knock it off, these are the rules, and this is what we are going to do. POST right now is a rudderless ship, not because they have an incompetent director, but because they don't have rules.

On the legislative issue, it will be important to get Wayne Ternes' and Winnie Ore's sides of the story.

It is a mess. I see POST as overseeing all law enforcement, so to have a director take administrative leave, and to have a rudderless ship is a bad situation.

If there are valid beefs against Wayne, can they work it out?

The culture used to be that if someone was upset with an officer, they would say, who your sergeant is. Now people go to the head of the agency or to the Governor, it's how things have changed. These days people don't trust going in and talking to a sheriff about a complaint on one of their deputies.

Any other people you feel I should talk to?

Wayne Ternes

Tana Meuer

Winnie Ore. I have all the respect in the world for Winnie Ore in running POST and holding people accountable.

POST – Public Safety Officer Standards & Training Council
Organizational and Individual Workplace Performance Fact-Finding Interviews
September 2012

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Please describe you issues and concerns with POST and its staff.

I don't know if you've heard the recording of my statement at the August 2012 POST Council meeting, but I have several concerns with POST.

This started in 2008 or 2009. I retired from law enforcement in California with about 27 years of experience as a dispatcher and law enforcement officer.

When we got up here, we noticed that the Ronan Police Department had limited resources, so my husband and I went to work for them to help out. I worked as a records clerk in 2008.

When I was working there, I noticed that the [REDACTED], was falsifying grant documents and falsifying employment documents. With the grant documents, you have to report statistics such as the number of calls for service, number of traffic stops, etcetera, and he was just making these numbers up. He was then mailing fraudulent documents through the mail, which is another crime. As far as personnel records, a state requirement for police officers is to take a psychiatric exam, and he was falsifying psychiatric exams and signing them off. The liability of doing this is huge. If there is a use of force issue, and it comes out that the officer did not have this evaluation, it would create liability.

(*I resigned from my records clerk position with the City of Ronan in approximately Dec, 2009 and requested an exit interview at that time to make them aware of the reason I was leaving employment as a records clerk.)

(*I was employed by the city Parks department and in a janitorial capacity until my resignation on June 16, 2011. It was in this employment capacity that I discovered the theft and the confrontation occurred. The crime occurred on April 28, 2011..)

What I was seeing was criminal activity, and was a serious issue, so I went to Wayne in late 2008 or early 2009. I drove to Helena and met with him personally. At that time, he was a great listener, and I assumed that since I had notified him of the situation, he would look into it, but he did nothing. What I didn't know at the time was that there is an official complaint form. He did not notify me of the complaint process; he just listened and thanked me.

Later, I caught [REDACTED] stealing on **April 28, 2011**. He had broken into an area he wasn't supposed to be and took some supplies. When I confronted him, he secretly recorded our meeting (the conversation). He had a tape recorder in his pocket and switched it on before I confronted him. It is ok to tape record someone if you are a cop and it is during the course of a lawful investigation, (or if there is mutual consent for the recording), it is not ok to tape record people without their knowledge or consent. ([REDACTED]), as a 'suspect' in a theft meant tape recording the conversation was unlawful. It is a violation of privacy in communications. He also did it under the color of authority, on duty, and in uniform, which is a

violation of constitutional rights – the fourth amendment regarding unreasonable search and seizure. I contacted DCI, and they said it looked like a crime, but was too small in scope for them to look into, so they referred me to the Lake County Sheriff. I filed a report with Lake County. It ended up with an inexperienced detective who interviewed me and [REDACTED], but failed to follow-up to substantiate/corroborate or refute our stories, and then submitted his report to the County Attorney who did not have enough information to charge him.

I went through the grievance and complaint process with the City Council, they were not interested in pursuing the matter. I brought it to the attention of the City Council, and they chose not to do anything. (June 2011)

I then filed a formal complaint with Wayne Ternes at POST using the complaint form, in July **2011**. I had hoped Lake County would look into the criminal aspect, and POST would look into the ethics aspect.

In **July 2011**, I filed a formal complaint with Wayne and heard nothing. I emailed Clay Coker and didn't get a whole lot of cooperation from him. I had contact with Wayne Ternes and Clay Coker after filing the complaint, and they appeared to be lazy. They did no paperwork, no interviews, no investigation. I later called or sent an email to find out what was going on, and they did nothing. I finally got a letter on November 16th, 2011 from Wayne Ternes saying that he knew this is frustrating, but that it is an internal issue and that they [POST] weren't going to do anything about it. I was surprised by this.

The person I filed the report on [REDACTED] was involved in the fiasco in Lake County with the officers and the voting issues, and [REDACTED] was one of their main witnesses. I feel that Wayne Ternes and Clay Coker did not pursue my complaint regarding [REDACTED] because it would impeach the testimony of the main witness in their case against the Lake County deputies.

How do you know [REDACTED] was a primary witness for POST on Lake County?

I had a conversation with [REDACTED]. [REDACTED] was central in a lot of the issues related to the complaint against [REDACTED] – something to do with him and his son attending the academy, and a lot of documents were provided to POST. Documents were missing from the City. I was the records clerk, so was familiar with the issue, and the documents were under the control of [REDACTED]. They turned up missing, and [REDACTED] could not use the missing documents to defend himself against the complaints filed against him. All the documents disappeared when [REDACTED] left. Information such as personnel files, applications. [REDACTED] was acting as Personnel for the city and was keeping personnel documents rather than turning them over to the City Clerk. [REDACTED] had run for Sheriff in Lake County, and it was a nasty race. He ran and had allied himself with one of the other people who had run for Sheriff.

It is clear there is a lack of trust between POST – Wayne and Clay – because they've taken on an adversarial role as opposed to working with agencies. If you put someone on the defensive, the agency will not cooperate because the approach is not appropriate.

I also had an issue with POST because Winnie Ore is friends with the person against whom I had filed a complaint, so the impropriety was pretty glaring.

I don't have a fix other than suggesting that the POST Council look at someone who has experience in law enforcement, not someone from corrections, to serve as director and to chair it.

I don't think Wayne Ternes has an understanding as to what constitutes a crime, and without this understanding, it is tough to conduct an investigation. I don't think Wayne Ternes has the experience, and Clay Coker doesn't seem to be motivated, or at least wasn't motivated to do this one.

I suggest POST look at their role. Most of their interaction is with sworn police officers, more so than corrections. They need to work with the people they are overseeing, and seek input from the people they are overseeing.

As an aside, Wayne Ternes and Clay Coker got personally involved in an investigation that they shouldn't have been involved in, and when they started making statements to the press, it takes away from the credibility of the office. Whoever was overseeing them didn't do their job, and it has turned out to be quite a mess. I am unhappy with Wayne Ternes' and Clay Coker's performance as far as investigation. They need to rethink what they are doing and put someone with investigative skills in as the investigator.

Wayne's problem is that he got personally involved and didn't remain impartial. He was making statements to the press, and the proper thing to do is to not make statements to the press when an investigation is ongoing.

How did the potential friendship between Winnie Ore and [REDACTED] come to your attention?

I reached a dead end with Wayne, so I sent an email to all the POST Council members and didn't get a response. I found Winnie Ore on Facebook, and sent her a message asking why she didn't respond to my email. I saw on her friend's page that she was a friend and associate of [REDACTED]. I don't think that Winnie Ore had any privacy settings, so anyone can look at her site and friends.

The November 16, 2011 letter is an example of one of the downsides of not having someone with law enforcement experience as the POST Executive Director. It appears Wayne Ternes does not understand the elements of a crime, how to conduct an investigation, or how to discern between an internal personnel issue and a crime. In this one [the [REDACTED] complaint], it is subtle because he was on duty and in uniform. I don't think Wayne Ternes understands the law. If you are a suspect, you can't use your law enforcement status as a defense [for recording someone without their knowledge]. (A suspect in a crime normally won't investigate himself, as [REDACTED] claimed he was conducting an investigation) Wayne Ternes was thinking it wasn't a crime because [REDACTED] was on duty and was in uniform and because he doesn't have the knowledge or experience to put it together like a police officer or someone who does criminal investigations would.

Do you see any strengths or opportunities with Wayne Ternes?

He is very personable and a good listener. But, he needs to step out of being personally involved in investigations, and step away from being adversarial and be more cooperative, up to the point of being deferential, with the people he is working with, and he needs to keep them informed. They have to let the Chief know an investigation is going on and keep them in the loop.

Also, I am not sure why these investigations are dragging on for years. You could bankrupt someone. If these people are the subject of an ethics complaint; they have to hire attorneys, and it could cost a lot to pay these attorneys if the case drags out.

What was the role of the Ronan Police Chief in the [REDACTED] issue? Did you or Wayne talk to him?

I will try to put this delicately. [REDACTED] could sell snow to an Eskimo. He is very convincing, so when I brought it to the Chief's attention, he talked to [REDACTED] and [REDACTED] convinced him that nothing was going on, but it is hard to argue facts. The numbers in Ronan's computer system do not match the numbers on the grant submitted to the Montana Board of Crime Control. I don't think [REDACTED] believed it at the time, but now he does.

(Essentially, it is my opinion that Wayne Ternes lacks the knowledge and experience to conduct thorough investigations and is at a distinct disadvantage in that he lacks a working knowledge of criminal law (as it relates to ethics complaints). I am not aware of his employment background or investigatory experience with the Department of Corrections. In 2008, when the original misconduct issue with [REDACTED] was brought to Wayne Ternes' attention, he failed to exercise due diligence by failing to follow up or take any action on the information he was provided. Clearly, regarding my 2011 ethics complaint, Mr. Ternes failed to recognize criminal conduct and dismissed the ethics complaint partially based on this failure.

Mr. Coker demonstrated a failure to exercise due diligence in the performance, or lack thereof, of his job duties and failed to conduct a proper and thorough investigation of my complaint. I cannot imagine the motivation for failing to conduct a proper investigation with the exception that the investigative findings may have impeached his witness in other cases.)

